United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

74-2131

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

P/S

Mildred Ives, Moira Robertson & Joyce Chapman,
on behalf of themselves and others similarly situated,

Plaintiffs-Appellees,

v.

W. T. Grant Company,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF PLAINTIFFS-APPELLEES

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No. 74-2131

Mildred Ives, et al.,
Plaintiffs-Appellees,

vs.

W. T. Grant Company,
Defendant-Appellant.

On Appeal From The United States District Court
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BRIEF OF PLAINTIFFS-APPELLEES

Statement of Issues

1. Where Congress established the jurisdiction of United States District Courts over truth-in-lending actions, did the Court below properly accept jurisdiction of the consumers' claims?

2. Where the W. T. Grant Company failed and refused to provide the consumers with congressionally-mandated information, did the District Court properly find violations of the Consumer Credit Protection Act, 15 U.S.C. §1601 et seq. and §36-393 et seq. of the Connecticut General Statutes?

3. Where the W. T. Grant Company charged consumers an

annual rate of interest in excess of twelve per cent, did the District Court properly find usury, in violation of §§36-225 et seq. and 37-4 of the Connecticut General Statutes?

4. Where the W. T. Grant Company refused to cease collections of illegal and usurious coupon contracts, did the District Court properly issue its injunction, prohibiting such collections from the Rule 23(b)(2) consumer class, without requiring notice pursuant to Rule 23(d)(2)?

Statement of the Case

The Company's statement of the case sets forth the prior proceedings below. The Company's coupon plan, at issue in this appeal, has been described in several cases.[1] The Court below explained the Company's plan as follows:

> "Under the credit plan at issue, a customer obtains a book or books of coupons which in turn may be exchanged for merchandise sold by defendant; the coupon books have varying total values of $10.00, $25.00, $50.00, $100.00 or $200.00, and the coupons may be either exchanged for merchandise at any time or returned for a cash refund. When acquiring a coupon book for the first time or reopening a coupon account, like plaintiff Joyce Chapman, a customer executes a form retail installment sales contract, generally labelled a 'new and reopened' account agreement, which sets forth the transaction's terms and basically obligates the customer-debtor to pay in monthly installments a total sum consisting of the face value of the coupon book, any attendant credit insurance charges, and finance charges computed on the coupon book's value and any such insurance charges. The monthly installment payment is ordinarily set at the outset at a figure which would result in a paid-up account within twenty-four to thirty months. Prior to January 1. 1971, the customer's obligation to pay accrued immediately upon entry into the installment contract; thereafter, as in plaintiff Joyce Chapman's case, the

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1. Rathbun v. W. T. Grant Company, 219 N.W.2d 641, 644 (Minn. 1974); W.T. Grant Company v. Walsh, 100 N.J.Super. 60, 241 A.2d 46 (1968); State of Wisconsin v. W.T. Grant Company., 4 C.C.H.Consumer Credit Guide, ¶¶99135, 99146, pp. 89007, 89027 (Wisconsin Circuit Court, Dade County, 1972), (1969-1973 Transfer Binder)

obligation has been triggered by the first exchange of a coupon for merchandise, although the monthly payment obligation which then accrues is based on the full contract amount without regard to the amount of the first actual coupon-merchandise exchange or to the actual period of time over which the coupons are used.

"If the debtor chooses to acquire additional coupon books while the original account is still outstanding, like plaintiffs Mildred Ives and Moira Robertson, a substituted 'add-on' form installment sales contract is signed. Typically, the prior contract balance (less an unearned finance charge rebate), plus the sum of the new coupons issued (together with any new insurance charges), constitute an amount on which a new overall finance charge is assessed, and the grand total is again made payable in monthly installments, with the first payment due thirty days from the add-on contract's execution--again without regard to any actual use or rate of use of the new coupons." (App. 169a-170a).

I. TITLE 15 U.S.C. §1640(e) ESTABLISHED THE JURISDICTION OF THE DISTRICT COURT.

A. Introduction

In Title 15 U.S.C. §1640(e), Congress established the jurisdiction of United States District Courts to redress violations of truth in lending. Congress' authority to create this jurisdiction--and to withdraw it--is, of course, supreme and exclusive. Constitution, Article III, Section 1; Sheldon v. Sill, 49 U.S. (8 How.) 441, 448-449 (1850); Lockerty v. Phillips, 319 U.S. 182, 187-188 (1943).

Courts are barred from countenancing any limitation, modification, or repeal of the jurisdiction so created unless Congress speaks with an unmistakable voice; "repeals by implication are not favored". Lynch v. Household Finance Corporation, 405 U.S. 538 549 (1972) (quoting Posadas v. National City Bank, 296 U.S. 497, 503 (1936)). At no time has Congress withdrawn, limited or modified the federal jurisdiction conferred by §1640(e), either in exempted

or non-exempted transactions. Indeed the legislative history of the Act, as well as its administration by the Federal Reserve Board, demonstrates that the District Court was correct in accepting jurisdiction pursuant to 15 U.S.C. §1640(e).

B. The Federal Reserve Board's Interpretation And Administration of the Truth In Lending Act Support the District Court's Decision to Accept Jurisdiction of the Consumers' Claims.

12 C.F.R. §226.12(c), issued by the Federal Reserve Board to implement 15 U.S.C. §1633, states:

> "In order to assure that the concurrent jurisdiction of Federal and State courts created in section 130(e) of the Act shall continue to have substantive provisions to which such jurisdiction shall apply, and generally to aid in implementing the Act with respect to any class of transactions exempted pursuant to paragraph (a) of this section and Supplement II, the Board pursuant to sections 105 and 123 hereby prescribes that:
>
> (1) No such exemption shall be deemed to extend to the civil liability provisions of sections 130 and 131; and
>
> (2) After an exemption has been granted, the disclosure requirements of the applicable State law shall constitute the disclosure requirements of this Act, except to the extent that such State law imposes disclosure requirements not imposed by this Act. Information required under such State law with the exception of those provisions which impose disclosure requirements not imposed by this Act shall, accordingly, constitute the 'information required under this chapter' (Chapter 2 of the Act) for the purpose of Section 130(a)."[2]

The Grant Company claims that 12 C.F.R. §226.12(c) (1970) exceeds the parameters of the Federal Reserve Board's discretion. The Company's burden of sustaining this assertion is heavy indeed.

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2. The Board's adoption of state law as the federal standard of liability is not uncommon federalism. E.g., 12 U.S.C. §§85-86; Daggs v. Phoenix National Bank, 177 U.S. 549, 555 (1900) ("The intention of the national law is to adopt the state law..."); Hiatt v. San Francisco National Bank, 361 F.2d 504 (9th Cir. 1966); Schumacher v. Lawrence, 108 F.2d 576, 577 (6th Cir. 1940).

In N.C. Freed Company v. Board of Governors of the Federal Reserve System, 473 F.2d 1210, 1217 (2nd Cir. 1973), this Court held:

> "[S]ince the regulation constitutes a contemporaneous construction of a statute by the agency charged by Congress with the administration of the Act, the Board's construction is entitled to deference."

See, also, Mourning v. Family Publications Service, 411 U.S. 356 (1973); Lewis v. Martin, 397 U.S. 552, 559 (1970); Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare, 448 F.2d 209 (2nd Cir. 1971). The consumers submit that Grants has utterly failed to satisfy this burden.

In enacting truth-in-lending, Congress relied heavily on "the Board of Governors of the Federal Reserve System. No one can deny their experience and expertise in these matters." H.R. Rep. No. 1040, 90th Congress, 1st Sess. (1967), p. 18. Reviewing the legislative history, the Supreme Court stated:

> "To accomplish its desired objective, Congress determined to lay the structure of the Act broadly and to entrust its construction to an agency with the necessary experience and resources to monitor its operation. Section 105 delegated to the Federal Reserve Board broad authority to promulgate regulations necessary to render the Act effective. The language employed evinces the awareness of Congress that some creditors would attempt to characterize their transactions so as to fall one step outside whatever boundary Congress attempted to establish. It indicates as well the clear desire of Congress to insure that the Board had adequate power to deal with such attempted evasion. In addition to granting to the Board the authority normally given to administrative agencies to promulgate regulations designed to 'carry out the purposes' of the Act, Congress specifically stated:
>
> > 'These regulations may contain such classifications, differentiations, or other provisions,

> and may prov[illegible]such adjustments and exceptions to [illegible] class of transactions, as in the judgment of the Board are necessary or proper...to prevent circumvention or evasion [of the Act], or to facilitate compliance therewith.' (15 U.S.C. §1604).

> "The Board was thereby empowered to define such classifications as were reasonably necessary to insure that the objectives of the Act were fulfilled..." Mourning v. Family Publications Service, supra, 411 U.S. at 365-366.

Prior to the effective date of §226.12(c), the Board explained the proposed regulation in its annual report to Congress for the year 1969:

> "The Board believes that after an exemption for classes of transactions within a State has been granted, customers should have continued access to Federal or State courts in seeking redress for alleged violations of the disclosure provisions of State statutes, including the right to rely upon Federal or State rules relating to class actions. Accordingly, the Board has published for public comment...a proposed amendment to Regulation Z which would provide that no exemption shall be construed to extend to the civil liability provisions of sections 130 and 131 of the Act. The effect of this amendment would be to substitute the applicable disclosure requirements of State law for the requirements of Chapter 2 of the Act following an exemption, thus retaining a basis for liability in the Federal courts." Board of Governors of Federal Reserve System, Annual Report to Congress on Truth In Lending For The Year 1969, p. 5.[3]

Congress has surely ratified the Board's interpretation of the Act's exemption statute, 15 U.S.C. §1633. Each year the Board must advise Congress of its policies and activities with respect to exempted transactions. 15 U.S.C. §1613. The consumers are not aware of a single congressional challenge to 12 C.F.R. §226.12(c). Indeed, recent amendments to the Truth In Lending Act, P.L. 93-495 (1974), refuse to alter the Board's interpretation of 15

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3. In practical terms, the Board has explained that "After an exemption has been granted, criminal and administrative responsibility would be under State control with respect to such exempted transactions." 35 Fed. Reg. 5214, 5215 (1970).

U.S.C. §1633. The new Act's profound emphasis on class actions[4] as a means of inducing compliance with truth in lending vindicates the Board's decision to assure a federal forum; for, pursuant to §226.12(c), the Board guaranteed consumers "the right to rely upon Federal or State rules relating to class actions." Board of Governors of Federal Reserve System, Annual Report to Congress on Truth In Lending for the Year 1970, p.6 (1971); Id. for the Year 1969, p.5 (1970).

Despite the Grant Company's argument that Congress required the Board to be wholly unconcerned about exempted states' administration of the Act, the Board regularly informs Congress of the quality and adequacy of enforcement by exempted states. E.g., Board of Governors of Federal Reserve System, Annual Report to Congress for the Year 1973, pp. 4-5 (1974). Any lesser vigilance by the Board would indeed be surprising; for Truth In Lending was the product of six years' tenacious effort by a congressional group of consumer advocates committed to an effective bill. E.g., Hearings on H.R. 11601 before the Subcommittee on Consumer Affairs of the Committee on Banking and Currency, House of Representatives, 90th Cong., 1st Sess., pp. 158-181 (1967) (Paul Douglas); Mourning v. Family Publications Service, supra. Indeed, the Board's continuous monitoring of exempted states demonstrates that, even with respect to exempted transactions, federal power and federal law remain the locus of authority. The consumers are unaware of a single congressional complaint that the Board's monitoring activities

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4. See, E.g., S.Rep. No. 93-278, 93rd Cong., 1st Sess., pp. 14-15 (1973).

exceed its powers. Compare, footnote 2, supra.

This Court should adhere to the "venerable principle that the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction." Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 381 (1969). Deference to this principle requires that this Court sustain the District Court's jurisdiction.

C. The Legislative History Of Truth In Lending Demonstrates That 12 C.F.R. §226.12(c) Is Not Inconsistent With The Purposes Of The Act.

In arguing that 12 C.F.R. §226.12 exceeds the Board's powers, Grants relies exclusively on Senate hearings, Senate debates and Senate reports, and remarks at these hearings by Governor Robertson of the Federal Reserve Board. Such reliance is misplaced. The Senate Committee on Banking and Currency reported a bill, passed by the full Senate and pursuant to the recommendation of Governor Robertson, which lacked any provision for administrative enforcement, e.g., 114 Cong. Rec. 14489-14490 (1968) (Sen. Proxmire); which viewed the private civil action as virtually the sole vehicle for inducing compliance with the Act, S. Rep. No. 392, 90th Cong., 1st Sess., p. 9 (1967); and which therefore accorded the Board no role in determining the effectiveness of administrative enforcement in exempted States, id. at 21. Each of these positions was decisively rejected by the House; by the conference committee formed as the result of the House-Senate disagreement; and in the Act upon final passage.

In House deliberations, occurring after the Senate's passage

of its bill, a provision for administrative enforcement was considered for the first time. See, e.g., Hearings on H.R. 11601, supra, pp. 28-35. Despite the Senate's contrary position, the House decreed administrative enforcement the primary means of inducing compliance with the Act. H.R. Rep. No. 1040, 90th Cong., 1st Sess., p. 18 (1967). In so deciding, the House rejected Governor Robertson's views that administrative enforcement was unnecessary; and similarly rejected the Senate's explicit reliance on those views.[5] The House passed the direct lineal ancestor of 15 U.S.C. §1607, providing for administrative enforcement primarily by the Federal Trade Commission. 114 Cong. Rec. 1601, 1855 (1968); H.R. Rep. No. 1040, supra, pp. 18-19.

To resolve the House-Senate conflict a conference committee was designated. 114 Cong. Rec. 2550, 2555, 2736 (1968). The conference committee's report rejected the position of the Senate and Governor Robertson, and supported the House. E.g., 114 Cong. Rec. 14382, 14387 (remarks of Rep. Sullivan: "On administrative enforcement of the disclosure requirements, the House provision prevails. The Senate had passed what was, in effect, a self-enforcement measure..."); 14489, 14490 (Sen. Proxmire).

Moreover, portions of the Senate legislative history demonstrate that the original Senate version contemplated a broad grant of discretion to the Board consistent with the issuance of the "partial" exemption so opposed by the Company. The Senate Committee held that its version "would give the Federal Reserve Board the

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5. Governor Robertson's opposition to administrative enforcement was expressed in both the House hearings, p. 146, and the Senate hearings, see Appellant's Brief, pp. 8-10. See also, Hearings on H.R.11601, supra, at 128. The Senate report explicitly adopting Governor Robertson's views is reproduced at page 10 of Appellant's Brief.

authority to exempt creditors from complying with all or parts of the bill..." S. Rep. 392, 90th Cong., 1st Sess., p. 8 (1967) (emphasis added). Additionally the Committee explained that the Act "permits the Board to exempt creditors..." Id. at 21 (emphasis added). Clearly, the Senate version accorded the Federal Reserve Board the freedom to exercise its discretion in such manner as would assure effectuation of the Act's purposes, 15 U.S.C. §1601. The Board's regulation, 12 C.F.R. §226.12(c), does precisely that.

An emasculated interpretation of the scope of the Board's authority would indeed be anomalous, in view of Congress' overwhelming concern that the Act be effectively administered and enforced. E.g., Mourning v. Family Publications Service, supra.

The full Congress thus decisively rejected the Senate's original position on administrative enforcement. The Senate hearings, Senate committee reports, and the rejected views of Governor Robertson are therefore singularly unpersuasive of the Grant Company's proposition that the Board's regulation, 12 C.F.R. §226.12(c), violates the Act.

D. If This Court Invalidates The Board's Regulation, 12 C.F.R. §226.12(c), The Consumers' Credit Transactions With The Company Are Governed Exclusively By Federal Law, 15 U.S.C. §§1601 et seq., And Federal Jurisdiction Exists Pursuant To 15 U.S.C. §1640(e).

The Board's exemption of certain Connecticut transactions was granted pursuant to its regulation, 12 C.F.R. §226.12(c). See, 35 Fed. Reg. 11992 (1970). If this Court invalidates §226.12(c), then the basis for such exemption will have been eliminated. In that event, the exemption which the Board illegally granted must

be deemed null and void. App. 164a. The transaction at issue will thus be governed exclusively by federal law, 15 U.S.C. §§1601 et seq., with federal jurisdiction conferred by 15 U.S.C. 1640(e).

Therefore, even if this Court invalidates §226.12(c), the District Court properly accepted jurisdiction of the consumers' complaints.[6]

II. THE DISTRICT COURT PROPERLY ENTERED SUMMARY JUDGMENT AS TO LIABILITY WITH RESPECT TO THE CONSUMERS' TRUTH IN LENDING CLAIMS.

A. 1. The W. T. Grant Company Failed To Employ The Prescribed Term "Unpaid Balance" In Violation Of The Truth In Lending Act.

The District Court specifically found that the Company's standard form coupon contracts did not employ the required term "unpaid balance". Ives v. W. T. Grant Co., App. 172a. The Company does not contest this finding of fact by the District Court. Connecticut Regulation §36-395-7(c)(5) [12 C.F.R. §226.8(c)(5)] requires Grants to employ the term "unpaid balance". Since this requirement is clear and unambiguous, the Company's failure to use the term "unpaid balance" subjects it to liability under 15 U.S.C. §1640 and §36-407a of the Connecticut General Statutes.

2. The District Court Did Not Err When It Rejected The Company's Claimed "Unintentional Violation" Defense.

The District Court permanently enjoined Grants from entering into coupon contracts in Connecticut without providing the required truth-in-lending disclosures, and rejected its claimed "unintentional violation" defense. App. 171a. The Company alleges that material

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6. The District Court's judgment explicitly held that the Company had violated 15 U.S.C. §1640. App. 182a.

questions of fact exist as to the viability of the "unintentional violation" defense.[7] It claims to have undertaken "extensive efforts to comply with the requirements of the Act." Appellant's Brief, pp. 19, 24. The District Court properly rejected this defense as insufficient as a matter of law. The Court explained:

> "The defense tendered, however, is both irrelevant to the limited grant of equitable relief presently sought...and in any event premised upon a mistaken interpretation of the statute, for the defense is not a question of the creditor's general 'good faith' but of inadvertant clerical error not here involved....The issue presented is simply whether defendant's standard form contracts fail to satisfy the disclosure requirements asserted." App. 171a.

The Company's contention that it is insulated from any injunctive order because of its claimed "unintentional violations" is a contradiction in terms and without merit. The District Court ordered Grants to comply with the Act. Whether or not the violation

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7. Grants does not contest in this appeal the appropriateness of the injunctive order prohibiting it from entering into coupon contracts in Connecticut without first providing the required truth in lending disclosures. App. 183a.

is "unintentional", Grants must provide required disclosures.[8] Whatever relevance a claim of "unintentional violation" may have as a defense in an action for damages, compare, Welmaker v. W. T. Grant Company, 365 F. Supp. 531 (N.D.Ga. 1972), with, Ratner v. Chemical Bank New York Trust Co. , 329 F. Supp. 270 (S.D.N.Y. 1971), such a defense in an action for declaratory and injunctive relief is baseless. Ives v. W. T. Grant Company, supra; Welmaker v. W. T. Grant Company, supra.

The Seventh and Ninth Circuits have recently agreed with Ratner v. Chemical Bank New York Trust Co., supra, that even in damage actions, Grants' "unintentional violation" defense is without merit. Haynes v. Logan Furniture Mart, Inc., ___ F.2d ___ (7th Cir. 1974); Palmer v. Wilson, 502 F.2d 860, 861 (9th Cir. 1974). See, also, Johnson v. Associates Finance, Inc., 369 F.Supp. 1121 (S.D.Ill. 1974); Starks v. Orleans Motors, Inc., 372 F.Supp. 928 (E.D.La. 1974); Buford v. American Finance Co., 333 F.Supp. 1243 (N.D.Ga. 1971); Owens v. Modern Loan Co., ___ F.Supp. ___

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8. See the ruling of the Federal Trade Commission in In The Matter Of Beauty Style Modernizers, Inc., 4 CCH Consumer Credit Guide, ¶98791, p. 88423, 88425 (1974):

> "The purpose of that statute is to permit the ordinary consumer, without regard to the degree of his commercial sophistication, to receive the kind of credit information that will allow him effectively to compare the credit terms being offered in the marketplace and thus to 'shop' for the most favorable terms available. (15 U.S.C. §1601). Only uniform terms, universally used, would allow the kind of credit comparison mandated by the Act. (See Zale Corp., et al., 78 FTC 1195, 1223 (1971); H.R. Rep. No. 1040, 90th Cong. 1st Sess. 13 (1967). The act was concerned not only with the substance of disclosure but, for purposes of consumer comparison shopping, was concerned as well with the form of that disclosure."

See also In The Matter of Zale Corp., et al, 78 FTC 1195 (1971), aff'd., 473 F.2d 1317 (5th Cir. 1972); In The Matter of Charnita, Inc., 80 FTC 892 (1972), aff'd., 479 F.2d 684 (3rd Cir. 1973).

(W.D.Ky. 1972), CCH Consumer Credit Guide ¶99,099, p. 88941 [1969-1973 Transfer Binder].

Moreover, the Company's claim of "good faith" is misleading and factually erroneous. On pp. 19 and 25, Appellant's Brief, the Company claims that its 1968 pre-Truth-In-Lending form standard coupon contract employed the term "unpaid balance" instead of the term "amount financed". Affidavit of Robert J. Kelly, App. 110a, Exhibit 2. Mr. Kelly states that the form was then redrafted to substitute the term "amount financed" for the term "unpaid balance". Grants argues that if the form had not been redrafted, it "would not have violated Regulation Z by using the term 'Amount Financed' instead of 'Unpaid Balance'..." Appellant's Brief, p. 25. Grants wholly ignores the unequivocal mandate of the Federal Trade Commission and the Federal Reserve Board that it employ both terms, and that its failure to employ both terms in the standard form coupon contracts is a violation. The use of the term "unpaid balance" is prescribed by 12 C.F.R. §226.8(c)(5), Conn. Reg. §36-395-7(c)(5), and the term "amount financed" is required by 12 C.F.R. §226.8(c)(7), Conn. Reg. §36-395-7(c)(7).

Grants' lack of claimed "good faith" is demonstrated by a July 21, 1971 FTC Informal Staff Opinion Letter in which creditors were cautioned to employ the term "unpaid balance". See letter attached as Addendum A. This letter was issued almost a year before this suit was instituted on June 20, 1972, App. 2a. On September 19, 1974, more than a month before the Company's Brief was submitted herein, FRB letter No. 842 reaffirmed this advice. See letter attached as Addendum A-2. Prior to institution of this

suit, the Federal Trade Commission enforced administratively the failure by creditors to employ the term "unpaid balance". Indeed, consent orders have been approved where the term was not employed: Seattle Mobile Homes, Inc. d.b.a. Pacific Mobile Homes, etc., 78 FTC 340, 345 (1971); McMahans Furniture Enterprises, et al, 81 FTC 104, 123 (1972).

Grants also omits from its presentation the fact that the Federal Trade Commission on December 7, 1972 issued a complaint against the Company for violations of the Federal Trade Commission Act and the Truth In Lending Act in conjunction with the coupon plan. Addendum A-3. On October 12, 1973, the Commission and the Company signed a consent order enjoining future violations. Addendum A-4; App. 179a-180a. Mr. Kelly's chronology of his discussions with the FTC, App. 106a-110a, is curiously underinclusive.

B. The W. T. Grant Company Failed Properly To Disclose Non-Rebated Insurance Premiums.

The District Court found Grants in violation of the Act on the ground that the unearned and non-rebated insurance "premiums must be specifically disclosed as an additional element of the add-on agreement's finance charge. Cf. Conn. Reg. §§36-395-3(a), 36-395-7(c)(8)(A); 12 CFR §226.4(a)(5)." App. 173a.

Connecticut Regulation §36-395-7(j) [12 C.F.R. §226.8(j)] requires that any existing extension of credit that is refinanced, consolidated or increased be considered a new transaction for

purposes of the Act subject to all the disclosure requirements.[9]

It is undisputed that, in "add-on" contracts, Grants did not rebate insurance premiums not yet earned in the old contracts, Stipulation 75, App. 127a, although it did rebate the unearned "finance charge". Stipulation 16, App. 118a. There were unearned insurance premiums in excess of one dollar on the remaining balance unpaid after rebate of unearned finance charges when Mrs. Ives and Mrs. Robertson entered into the "add-on" contracts in 1971. Stipulations 29, 41; App. 120a, 122a. These unearned insurance premiums were not disclosed on the "add-on" contract as part of the finance charge, Stipulations 34, 48; App. 121a, 123a, nor in the space on the "add-on" contract for insurance charges. Stipulations 17, 73-75, App. 118a, 127a.

No genuine issue of fact exists because the District Court ruled, as a matter of law, that:

"While entry into a substituted contract would

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9. The staff of the Federal Trade Commission on August 26, 1969 counseled "[a]ny time the original obligation is increased by an add-on sale, the purchase is considered to be a new transaction and disclosures must be made with each subsequent purchase. (Reg. Z/226.8(j))." FTC Informal Staff Opinion of August 26, 1969 by Ronald J. Dolan, Attorney, CCH Consumer Credit Guide ¶30,298, p. 66, 138. Addendum A-6.

> "Under these circumstances, §226.4(a)(5)(i) and (ii) would prevail, and a statement to the effect that insurance coverage is not required by the creditor must be conspicuously disclosed in writing to the customer. Additionally, as provided, a customer who does desire such coverage must necessarily provide the creditor with a specific dated and separately signed affirmative written indication of such desire after he has received written disclosure of the cost of such insurance." FRB Letter of June 27, 1969, by Milton W. Schober, Assistant Director. Addendum A-7.

> seem as a matter of law to call for a refund of the unearned premiums through discharge of indebtedness 'due to renewal or refinancing prior to the scheduled maturity date' of the original contract debt, cf. Conn. Gen. Stat. §38-253, see Welmaker, supra, at 537-538, defendant and the credit insurance carrier appear to treat the insurance coverage applicable to the first contract as continuing through the term of the second. Even if that arrangement is lawful, it is not voluntary, because the customer is provided no opportunity to authorize or to refuse insurance coverage on the old coupon debt balance for the extended term afforded by the add-on contract..." App. 173a.

Thus Grants must either provide the consumer signing an add-on contract an opportunity to obtain such insurance coverage by giving "specific dated and separately signed affirmative written indication" of his desire for such insurance coverage, Conn. Reg. 36-395-3 (a)(5), 12 C.F.R. §226.4(a)(5); or, disclose the amounts of the unearned and non-rebated insurance premiums "as an additional element of the add-on agreement's finance charge." App. 173a. See §IIC, infra.

C. The W. T. Grant Company Failed To Describe Properly Each Amount Included In The Finance Charge.

The District Court found that the Company did not describe "each amount included" in the total amount of the finance charge, in violation of Conn. Reg. §36-395-7(c)(8)(A) [12 C.F.R. §226.8 (c)(8)(i)].The only exception created by Regulation Z to this requirement is the sale of a dwelling, where the finance charge need not be stated. Id.

The amount of the finance charge is determined as the sum of all specified charges imposed directly or indirectly by the creditor. Conn. Reg. §36-395-3(a), 12 C.F.R. §226.4(a). The District Court

found that the amount of the finance charge in the Grants "add-on" standard form coupon contracts was composed of at least two elements, interest and insurance premiums (credit, property, life, accident and sickness), App. 173a-174a. The Court's finding was surely correct. See §IIB, supra. The W. T. Grant Company's failure to describe each amount used to determine the finance charge violates the Act.[10]

The consumers submit that the District Court was correct when it explained:

> "Perceiving no meaningful mode of 'description of each amount included' absent individual identification, the Court agrees with plaintiffs that itemization is required. If defendant is correct in further asserting that its finance charge is composed of but one element, a purported 'time-price differential', that characterization should be spelled out on the face of the contract;" App. 173a.

The only other reported decision on this question agrees with the District Court. Johnson v. Associates Finance Co., supra.

The description of each amount included in the finance charge obviously assists the consumer to shop for the best credit terms available. Cf., Mourning v. Family Publications Service, Inc., supra, 411 U.S. at 363, 369. If the consumer is informed that the merchant intends to perform a credit investigation at a cost of $25.00, he may be able to convince the merchant that there is no need for such an investigation, thus reducing the total amount of the finance charge. If informed that the finance charge is composed

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10. One of the violations prosecuted by the Federal Trade Commission was the Defendant's failure to describe the amount of premiums for insurance as a part of the finance charge. In The Matter Of The W. T. Grant Co., Addendum A-3.

solely of interest, the customer would be better able to bargain for a lower rate, perhaps at his credit union where his shares could be pledged as security for the loan. If the savings and loan association were to charge 19.90% interest, as did Grants, the consumer would likely question why he received but 5 1/4% on his passbook savings. The opportunities for discussion, education and bargaining are obvious, and limited only by human ingenuity. Such is the explicit purpose of Truth In Lending, 15 U.S.C. §1601.

The Company argues that the District Court must be reversed based on a staff letter from an advisor to the Federal Reserve Board. Mr. Garwood's letter, reproduced in part on p. 31 of Appellant's Brief, simply announces that "the requirement of disclosure of 'each amount included' is applicable only where the total amount of the Finance Charge includes more than one component". He does not explain the source of this opinion, nor the reasons for an exception to an otherwise clear and unambiguous regulation. His letter was issued approximately one year after the litigation herein was instituted. Judge Frankel in a similar context explained:

> "There is much debate in the papers now about the weight to be given to this attorney's opinion. It is not, and is not claimed to be, the position of the Board itself. The parties, after a flurry of epistolary sparring, have each gotten, and given the court, closely similar letters from the Board's Deputy Secretary about the protocol of all this. That official says not surprisingly, that a letter from any particular official like the attorney in question 'represents the informed view of the particular official***.' He goes on in his letter to defendant's counsel to say:
>
> > 'It is the Board's view that the public is entitled to rely on a formal staff opinion unless and until it is altered by the Board

> after formal consideration. Where the issue involves a statement of legal position, it may be assumed that while the question discussed has not been presented to, nor reviewed by the Board, such view is believed by the staff to be legally sound and judicially (sic) sustainable, and would be recommended by the staff for Board adoption should the matter be presented to the Board. However, in view of the pending litigation involving the issue discussed in the staff letter of November 28, 1969, the Board deems it inappropriate to examine at this time the opinion contained in that letter and therefore is not able to comply with your request.'
>
> "The upshot of all that is briefly stated: defendant disclaims reliance on the Board attorney's letter as the basis for its initial (since altered, see infra) practice of not disclosing annual rates in the absence of a finance charge. On its merits, the attorney's letter is a brief, conclusory statement rested upon what this court, with deference, finds to be insufficient analysis of the pertinent materials. Without discoursing at length on its 'weight', the position it espouses has been rejected." Ratner v. Chemical Bank New York Trust, supra, 329 F.Supp. at 278-279.

Grants cannot claim that it relied on Mr. Garwood's letter to draft its form because the letter was not then in existence. To the extent that Grants contends that this letter creates an additional exception to 12 C.F.R. §226.8(c)(8)(i), [Conn. Reg. §36-395-7(c)(8)(A)], for alleged single-element finance charges, said letter would be invalid under Section 4 of the Administrative Procedure Act, 5 U.S.C. §553. Cf., Continental Oil Co. v. Burns,

317 F. Supp. 194, 196-7 (D.Del. 1970).[11]

D. The W. T. Grant Company Failed To Disclose The Finance Charge In Add-On Coupon Contracts In A Clear, Conspicuous And Meaningful Manner.

The District Court found that the W. T. Grant Company failed to disclose the finance charge on its form add-on coupon contracts in a clear, conspicuous and meaningful manner. App. 182-183a, 172a. Grants argues (Appellant's Brief, pp. 27-28) that the District Court erred by entering summary judgment because of the alleged existence of a genuine issue of fact. The District Court decided this issue on a stipulated record. The Company produced no additional evidence in the District Court. In this appeal, the Company points to no competent evidence to controvert the District Court's finding. Ample authority supports the entry of summary judgment. Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973); Palmer v. Wilson, 502 F.2d 860 (9th Cir. 1974); Welmaker v. W. T. Grant Co., supra.

The Company next argues (Appellant's Brief, pp. 28-29) that the District Court erred as a matter of law by entering summary

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11. The Company also claims to have followed a form issued by the Federal Reserve Board in an informational pamphlet. Appellant's Brief, p. 20. The Company, however, ignored the warning on page 17 of the same pamphlet.

> "Typical Formats of disclosures under Regulation Z are shown on the following pages for demonstration only. They are not intended for the requirements of your business. For full information, please refer to the provisions of the Regulations."

In any event, the pamphlet cannot serve to repeal the duly promulgated regulations. Ratner v. Chemical Bank New York Trust Co., supra.

judgment. Clearly, the Court's decision was correct. The Company discloses the unlabelled "net finance charge" far more prominently than the actual finance charge (App. 35a, item 8(a)), on the Company's standard form contract). The District Court in Welmaker v. W. T. Grant Company, supra, 365 F.Supp. at 535, reasoned:

> "...the positioning of the unlabelled 'net finance charge' in relation to the required 'finance charge' serves only to confuse the customer and clearly detracts attention from the required disclosures, the total finance charge. The resultant confusion and distraction defeats the purpose of the Act by diminishing, if not preventing, the consumer's conceptualization of what the entire transaction is costing him. He is left with no clear and unambiguous ground for comparison credit shopping."[12]

The Court below, on the extensive stipulated record before it, did not err in holding that Grants had failed to disclose the finance charge in a clear, conspicuous and meaningful manner.

E. The W. T. Grant Company Failed To Describe Properly The Security Interest It Claimed In Its Coupon Contracts.

The District Court found that the Company did not provide

> "[a] description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the

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12. Moira Robertson's contract (App. 35a, Ex.B) discloses an amount financed of $796.41 (item 7) and a finance charge of $177.56 (item 8(a)) "less rebate $77.21 equals $100.35." See also Stipulation 36, App. 121a. Instead of disclosing the finance charge of $177.56 prominently underneath the "Amount Financed" of $796.41, and in the column where all the other numerical disclosures are made, Grants discloses the finance charge off to the left of that column, in a smaller space. In the space where the format of the contract leads one to expect disclosure of the finance charge, Grants instead discloses the unlabeled "net finance charge" of $100.35. Thus, the natural result of Grants' arrangement of the disclosed figures is to view the $100.35 "net finance charge" as the genuine finance charge since it is disclosed far more prominently than the actual finance charge of $177.56.

extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify." Conn. Reg. §36-395-7(b)(5), 12 C.F.R. §226.8(b)(5).

The standard form coupon contracts provide:

"(c) that the seller shall retain title to and a purchase money security interest in such merchandise until all amounts due hereunder shall have been paid and the right to possession in case of default." App. 35a, Exhibits A-C; Stipulated Documents 5-15, 17-24; App. 152a-153a.

However, Grants claims (Appellant's Brief, p. 37) that it does not retain a security interest in connection with coupon books. The District Court responded:

"Defendant now disclaims...any 'security interest in either the coupons or the merchandise for which the coupons are exchanged', but the printed contract speaks for itself and is in patent violation of the duty to delineate clearly the meaning and effect of any security interest clause, Conn. Reg. §36-395-7(b)(5)." App. 174a.

Grants seeks to justify its position by explaining:

"The reference to a security interest on the face of the contract is present only because the same form is used for other financing plans, under which a security interest is retained." Appellant's Brief, p. 37, n.14.

Grants' position is fatally defective because the Company never informed the consumers of its disclaimer of a security

interest.[13] The District Court's finding of a violation based on Grants' deliberate disclosure of erroneous information concerning the existence of the security interest was clearly proper.

The District Court also properly ruled that the form standard contract "speaks for itself". App. 174a. Such a ruling accords with

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13. Regulation Z specifically allows creditors to make explanations or provide additional information in connection with the disclosure of required information, so long as such information or explanations do not "mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed." Conn. Reg. §36-395-5(b), 12 C.F.R. §226.6(c). Welmaker, supra, 365 F.Supp. at 535. Grants could have stated that the security interest would only apply when the standard form contract was used in conjunction with the purchase of merchandise under the "Special Purchase Installment Plan". App. 101a, ¶¶8 and 9. Or, the Company could have employed a separate form document for the coupon plan in Connecticut which omitted any reference to a security interest as it has done in the states of New York, California, Delaware, and Oregon. W. T. Grant Co. v. C.I.R., 58 T.C. 290, 293 (1972), rev. on other grounds, 483 F.2d 1115 (2nd Cir. 1973).

Connecticut law.[14]

Furthermore, the Company is collaterally estopped from disclaiming "any 'security interest in either the coupons or the merchandise for which the coupons are exchanged...'" App. 174a. For in proceedings before the United States Tax Court, Judge Simpson wrote in W. T. Grant Co. v. C.I.R., 58 T.C. 290 (1972), rev. on other grounds, 483 F.2d 1115 (2nd Cir. 1973):

> "Most of the facts have been stipulated, and those facts are so found..." 58 T.C. at 291.
>
> "...The retail credit agreements used under the coupon book installment plan are identical in most States to those utilized under the special purchase installment plan and provide that the [W. T. Grant Company] retains title to the mer-

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14. The Connecticut Supreme Court has explained in Lakitsch v. Brand, 99 Conn. 388, 393, 121 Atl. 865, 867 (1923):

> "'[T]he intention of the parties is to be deduced from the language employed by them, and the terms of the contract where unambiguous are conclusive in the absence of averment and proof of mistake; the question being, not what intention existed in the minds of the parties, but what intention is expressed in the language used. When a written contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed...It is not the province of a court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words it does not contain.' 13 C.J. p. 524, §485."

See Beach v. Beach, 141 Conn. 583, 593, 107 A.2d 629, 633 (1954); Trumbull Electric Mfg.Co. v. John Cooke Co., 130 Conn. 12, 17, 31 A.2d 393, 395 (1943); Conn. Co. v. Division 425, 147 Conn. 608, 617, 164 A.2d 413, 418 (1960).

> chandise sold thereunder until full payment is made. In New York, California, Delaware, and Oregon, State law does not permit title retention where merchandise is sold in exchange for coupons, and the form of retail agreement used in such States omits such a provision." 58 T.C. at 293 (emphasis supplied).

The defendant had a full and complete opportunity to litigate the question of the retention of a security interest in the Tax Court and on appeal, and is now estopped from denying its retention.

The consumers submit that the District Court properly entered summary judgment against the Company on the issue of the retention of the security interest.

III. THE COURT BELOW DID NOT ERR IN HOLDING THAT THE COMPANY'S COUPON PLAN IS USURIOUS AND THAT NO GENUINE ISSUES OF MATERIAL FACT EXISTED ON THE RECORD.

The District Court held that the Company's coupon scheme was usurious and therefore in violation of §§36-243 and 37-4 of the Connecticut General Statutes:[15]

> "...the coupon plan is indeed usurious, the contract transaction a mere form for what is in substance a loan of the equivalent of money for an excessive return, cf. also W. T. Grant Co. v. Walsh, supra.

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15. §37-4 provides in relevant part that "(n)o...corporation... shall..., directly or indirectly, loan money to any person and directly or indirectly, charge, demand, accept or make any agreement to receive therefor interest at a rate greater than twelve per cent per annum." §36-243, which is part of the Connecticut Small Loan Act, provides in relevant part that no unlicensed "corporation...shall, directly or indirectly, charge, contract for or receive any interest, charge, or consideration greater than twelve per cent per annum upon the loan, use or forbearance of money or credit of the amount or value of one thousand eight hundred dollars or less."

> The customer purchases no goods by contract; he receives scrip to be used like cash to buy merchandise, and for that immediate credit agrees to pay back over an extended time period the principal amount represented by the face value of the coupons, together with a steep surcharge for the delay permitted in satisfying the account debt. The profit return is set at a rate well over twelve percent in each of the three executed contracts before the Court, and defendant has not argued that the annual percentage rates as to the three named plaintiffs are either untypical or inadvertent. cf. In re Feldman, 259 F. Supp. 218, 221 (D. Conn. 1966). This Court is of the view that a narrow interpretation of either Connecticut statute to exclude application of the law of usury to the instant credit device is without warrant." App. 175a.

A. The W. T. Grant Company's Coupon Credit Contracts Are Usurious.

The general elements of a usurious transaction are: (1) an agreement to lend money or its equivalent, or to forbear in requiring payment for a period of time; (2) an absolute, not contingent, obligation to repay; (3) charging a rate of interest or compensation greater than that allowed by law; and (4) an intention to violate the usury statutes. Kafes, Usury and Its Progeny: A Survey of Interest Rate Regulation in Connecticut, 43 Conn. B.J. 220, 232 (1969); Rathbun v. W. T. Grant Company, supra, 219 N.W. 2d at 646-647 (Minn. 1974); State of Wisconsin v. J. C. Penney Co., 48 Wis. 2d 125, 132-133, 179 N.W. 2d 641, 645 (1970).

1. The W. T. Grant Company Lent Money, Its Equivalent, Or Scrip Intended To Be Used As Money.

The Company's coupon plan involved a loan to the consumers of money, its equivalent, or scrip intended to be used as money. App. 175a. The record is replete with evidence that the Company intended

the coupons to circulate as money in its stores.[16] For example, the coupon books instructed the consumers to "use them like cash in any department of the W. T. Grant Co. or Member Stores." Stipulated Document 1; App. 152a, 155a. "Member Stores" were stores other than those owned by Grants which had agreed to accept its coupons. Thus, the coupons were also accepted "like cash" in stores other than Company stores. See Stipulated 84; App. 128a.

Connecticut sales tax was charged to the coupon book purchaser only when the coupons were exchanged for merchandise. If the coupons were goods or tangible personal property, a sales tax would be collected at the time the coupon contract was executed. §§12-407(2), 12-407(3), 12-407(7), 12-408 of the Connecticut General Statutes. Stipulations 35, 49, 58, 61, App. 121a et seq. Unused coupons could be returned to defendant's stores for a refund of their face amount, plus "complete finance and insurance charges, if any, on the unused coupons." Stipulation 21, App. 119a.

The finance charges and annual percentage rates imposed upon the consumers were computed as of the date the contracts were executed, and not based on the period of time over which or the dates when the coupons were actually used to purchase merchandise. Stipulations 13, 18, 19, 20, 27, 31, 32, 33, 43, 44, 45, 46, 47, 54, 55, 56, 62, 63, 64, App. 116a et seq.

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16. In paragraph 8 of his Affidavit in Opposition to Plaintiffs' Motion for Partial Summary Judgment, App. 101a, Robert J. Kelly, Defendant's Secretary and General Counsel described the transferability of the Company's coupons:

> "Coupons may be exchanged by the customer for merchandise at any of Grants' stores throughout the country, regardless of where such coupons are issued."

Courts analyzing the coupon credit scheme have concluded that the coupons are a money equivalent or a medium of exchange:

> "The trial court in its memorandum states:
>
> 'An analysis of the coupons in the light most favorable to the defendant reveals at best that they represent an advance of a medium of exchange which closely resembles money, albeit the medium of exchange can only be used in defendant's stores. They very closely approximate an advance of money, and it is difficult, if not impossible, to view the transfer of these coupons to the individual customers as a sale of intangible property, as defendant urges. As a matter of fact, the argument urging that they are either a sale of intangibles or an option to purchase future goods puts a frightful strain on the credulity of the average person. The fact is that the coupons represent in effect a loan of money to the customer, even though that money or money equivalent can only be used in the defendant's stores.'
>
> "Defendant's coupons do not come within the strict legal definition of money since their use is restricted to defendant's stores. However, we have not specifically limited the word 'money' in the usury statute to its legal meaning. Van Asperen v. Darling Olds, Inc., supra. The spirit of our usury statute is certainly such as to encompass within its reach usurious transactions, whether the subject of the loan be money, money equivalent, or extension of credit. We will look through the form to the substance of a transaction. Dunn v. Midland Loan Finance Corp., 206 Minn. 550, 289 N.W. 411.
>
> "After carefully balancing the permissible uses and restrictions on defendant's coupons, we conclude that they were intended to be a money equivalent within defendant's stores. Thus, their transfer to the customer was a loan of money within the contemplation of Minn. St. 334.01."

Rathbun v. W. T. Grant Co., supra, 219 N.W. 2d at 649; see W. T. Grant Co. v. Walsh, 100 N.J. Super. 60, 63-64, 241 A.2d 46, 48 (1968).

2. The Consumers Had An Absolute Obligation To Repay The Coupon Credit Contract.

The consumers had an absolute obligation to repay their coupon contracts. Stipulations 12, 13, 14, 18, 19, 33, 47, 56, 65, 66; App. 116a, et seq. The District Court found that pursuant to the coupon scheme, the customer "agrees to pay back over an extended time period the principal amount represented by the face value of the coupons, together with a steep surcharge for the delay permitted in satisfying the account debt." App. 175a. See also Rathbun v. W. T. Grant Co., supra, 219 N.W. 2d at 650.

3. The Company Charged The Consumers A Rate Of Interest Or Compensation In Excess Of That Permitted By §§36-243 And 37-4.

The Company charged the consumers a rate of interest or finance charge in excess of the twelve percent maximum permitted by §§36-243 and 37-4. Stipulations 5, 23, 24, 25, 36, 37, 38, 50, 71, 72; App. 116a,et seq. For example, all coupon contracts executed by plaintiffs Mildred Ives and Moira Robertson were standard form contracts, and all those executed after February 18, 1965 charged interest in excess of twelve percent per year. Stipulations 23, 24, 25, 36, 37, 38; App. 119a, 121a. The District Court noted that the W. T. Grant Company "has not argued that the annual percentage rates as to the three named plaintiffs are either untypical or inadvertent." App. 175a.

4. The Company Intended To Charge The Consumers The Rates Of Interest Disclosed On The Coupon Credit Contracts.

The Company intended to and did charge the consumers interest on coupon credit contracts in excess of twelve percent per year. App. 175a. These rates of interest are disclosed on the contracts of the consumers. See, e.g.,App. 35a. The intent to charge a specific rate

in excess of that allowed by statute is the only intent which need be proved; an intention to violate the usury laws is unnecessary. Manchester Realty Co. v. Kanehl, 130 Conn. 552, 555-6, 36 A.2d, 114, 116 (1944);[17] Atlas Realty Corp. v. House, 123 Conn. 94, 100-101, 192 Atl. 564, 567 (1937); compare, Ratner v. Chemical Bank New York Trust Co., supra.

5. The District Court Properly Applied §§36-243 And 37-4 To The Company's Coupon Credit Scheme.

The District Court held that "a narrow interpretation" of either §36-243 or §37-4 "to exclude application of the law of usury to the instant credit device is without warrant." App. 175a. A narrow interpretation of the Connecticut usury statutes has long been rejected by the Connecticut courts. Indeed, in analyzing what is now §37-4, the Connecticut Supreme Court declared that "it would be difficult to conceive of a more inclusive statute." Contino v. Turello, 101 Conn. 555, 561, 126 Atl. 725, 727 (1924).

The "one-sided"nature of the company's scheme is also reason to reject any "narrow interpretation" of the usury laws:

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17. In Manchester Realty Co., the court held:

> "The intent which is necessary to constitute usury is not the specific intent to violate the statute but the intent to exact payments which exceed the amount of interest allowed by the statute....
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> ....
>
> ...the circumstances which will explain away the apparent nature of the transaction are those which rebut the intent to charge an excessive rate..." Manchester Realty Co. v. Kanehl, supra, 130 Conn. at 555-556, 36 A.2d at 116.

"It is difficult to imagine a more one-sided scheme for the enrichment of a commercial establishment at the expense of a potential customer...This coupon plan not only pays no interest on money advanced but even charges the potential customer interest on his account before he makes any purchases. And the store has the additional happy chance of realizing the full value of the coupons if they are stolen, lost, destroyed or detached before being used. The Court is of the opinion that this plan is, in addition to its other faults, against public policy." W. T. Grant Co. v. Walsh, supra, 100 N.J. Super. at 65-66, 241 A.2d at 49.

B. No Genuine Issue Of Material Fact Barred The District Court's Entry Of Summary Judgment.

The Company claims that alleged material issues of fact require a trial of whether its coupon plan is usurious. Appellant's Brief, pp. 38-44. These alleged issues of fact apparently are:

(1) that the coupon transactions are sales, not loans (Appellant's Brief, pp. 38-41);

(2) that the coupons are not money (Appellant's Brief, pp. 41-43); and

(3) that the company did not have the "unlawful intent necessary to constitute usury...." (Appellant's Brief, pp. 43-44).

The record before the District Court included 27 stipulated documents, App. 152a-155a; 87 stipulations of fact and law, App. 116a et seq.; responses to twenty-three requests for admission, App. 41a-44a, 55a; answers of the Company to interrogatories, App. 60a, 89a; and an affidavit from the secretary and general counsel of the Company, App. 98a. The Company's claim that any remaining genuine issues of material fact existed is simply without merit.

1. Since No Material Facts Were In Issue, The District Court Properly Rejected The Company's Claim That Coupon Transactions Were "Sales" And Therefore Not Subject To The Usury Statutes.

The District Court properly rejected the Company's claim (Appellant's Brief, pp. 38-41) that its coupon transactions were "sales" that constituted an exception to the usury laws. App. 174a-175a. The consumers maintain, and the District Court held, App. 175a, that the Company's coupon plan was in reality a loan or device to evade the usury laws.[18]

In support of its position that the coupon credit transactions were "sales" which are exceptions to the usury laws, the Company cites several Connecticut cases which are wholly inapposite. Appellant's Brief, pp. 38-41. These cases are arranged by the Company in the following categories:

(a) sales of property on credit--the so-called "time-price" exemption;

(b) sales of negotiable instruments after initial negotiation;

(c) sales of credit.

a. The inapplicability of the so-called time-price exemption.

The cases cited by defendant concerning the so-called "time-price doctrine" are irrelevant because defendant's coupons are not

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18. The company claims that the consumers admit that the coupon credit transactions were "sales" instead of loans or a device to evade the usury laws. Appellant's Brief, p. 39. The consumers have not admitted this; the Company and the consumers have stipulated that the coupons are not goods within the meaning of §42-83, Conn. Gen. Stat., the Retail Installment Sales Act. Stipulation 22; App. 119a. See App. 175a-177a. The Company has also admitted that plaintiffs' contracts contained no charges for sales tax, which is paid only at the time the coupons are exchanged for merchandise which is tangible personal property. Stipulations 35, 49, 58, 61; App. 121a, 123a, 124a, 125a.

goods. Stipulation 22, App. 119a. Zazzaro v. Colonial Acceptance Corp., 117 Conn. 251, 254, 167 Atl. 734, 735 (1933); Johnson v. W. T. Grant Co., supra, 219 N.W. 2d at 648; W. T. Grant Co. v. Walsh, supra, 100 N.J. Super. at 64, 241 A.2d at 48. The so-called time-price exemption to the usury laws has been applied only to the sale of goods at either a cash price or an installment price.[19] Id.

b. The inapplicability of the cases involving the "sale" of negotiable instruments.

The cases cited by the Company concerning sales of negotiable instruments after the initial negotiation are also inapposite. See Appellant's Brief, p. 39. The coupon contract is not a note, draft,

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19. The Minnesota District Court in Rathbun v. W. T. Grant Co., 4 C.C.H. Consumers Credit Guide, ¶99084, p. 88911 (1973) (1969-1973 Transfer Binder) also sets forth other reasons why the "time-price" exception did not apply to the coupon credit scheme:

> "...although the defendant argues that in an isolated instance these coupons have been purchased by customers for cash, it is inconceivable that that has occurred on very many occasions, since the coupons are the equivalent of cash, and it would tax anyone's credulity to believe that sane people would purchase these coupons for cash if they had cash in their pocket for which they could purchase the goods themselves. Here the defendant is not determining the price at which he will sell his property, he is determining that he will exact a finance charge on the prospect of selling property in the future, and the finance charge is exacted, particularly in those contracts antedating January 1st, 1971, regardless of whether the prospect ever materializes. Indeed, use of the term "finance charge" is a misleading and ambiguous term in a document that purports to sell property but, in fact, does not. This is not a bona fide sale of something at a credit price which is higher than what the property would have sold at for cash but, rather, a scheme to evade the usury statute, and, thus, it does not fall within the principles of Dunn v. Midland Loan Finance Corp., supra. A thorough exmination and analysis of the agreement and coupons reveals that they are no more than a careful and deceptive attempt to conceal their substance."

or other negotiable instrument. See 42a-3-104 et seq., Conn. Gen. Stat. Furthermore, the Company has not alleged that it sells executed coupon contracts.

Walcott v. Skilton, 139 Conn. 424, 94 A.2d 802 (1953) was a suit, between two businessmen on three notes, arising from a method of automobile financing permitted by statute, §36-254 Conn. Gen. Stat., and regulated by the Connecticut Bank Commissioner. In Belden v. Lamb, 17 Conn. 440 (1846), the question before the Supreme Court was whether the transaction was a loan of money or the bona fide purchase of a business note at a discount.[20] The Court explained:

> "In all cases where the transaction is in fact a loan, though made to assume the form of a sale or other disguise, and a rate per cent beyond that of legal interest, is reserved or taken upon it intentionally, as a premium, the law pronounces it to be usurious." Id. at 452.

See Atlas Realty Corp. v. House, supra, 123 Conn. at 99, 192 Atl. at 566; see also §§36-243 and 37-5 of the Connecticut General Statutes.

c. The inapplicability of the cases involving "sales" of credit.

The cases cited by the Company concerning sales of credit are inapposite. Those cases discuss the performance of services in connection with a loan of money. See Douglass v. Boulevard Company, 91 Conn. 601, 604-605, 100 Atl. 1067 (1917); Beckwith v. Windsor Manufacturing Company, 14 Conn. 594, 604-605 (1842).

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20. The final case cited by the Company relating to sales of negotiable instruments, Tuttle and Holt v. Clark, 4 Conn. 153, 157 (1822), concerned a note which "was not usurious in its original concoction or made with an usurious intent..."

§36-243 now specifically applies to the loan, use or forbearance of money or credit and states that its provisions shall apply to any person "who, by any device or pretense of charging for his services or otherwise, seeks to obtain a greater compensation than twelve per cent per annum."

2. The Coupons Are Money, Its Equivalent Or A Medium Of Exchange Very Similar To Money.

There is no genuine issue of fact concerning the nature of the coupons, the method of their use, or the operation of the coupon credit scheme. See pp. 2-3 , supra. The Connecticut usury laws apply to direct or indirect loans of money, as well as the loan, use or forbearance of money or credit. §§36-243, 37-4. The District Court properly concluded on the extensive record before it that "the contract transaction is in substance a loan of the equivalent of money for an excessive return..." App. 175a.

3. The W. T. Grant Company Intended To Charge In Excess Of Twelve Per Cent Per Year On The Coupon Contracts Of The Consumers.

The W. T. Grant Company intended to charge in excess of twelve per cent per year on the coupon credit contracts of the consumers. See pp. 30-31 , supra. Since the only relevant intent is to charge more than the maximum allowable rate of interest, pp. 30-31 supra, there is no genuine issue of fact remaining concerning the Company's intent which would have prevented the District Court from entering its partial summary judgment.

The District Court thus did not err in finding that no genuine issues of material fact existed which would have prevented it from entering partial summary judgment in favor of the consumers.

IV. THE DISTRICT COURT PROPERLY PROHIBITED THE COMPANY FROM COLLECTING ON USURIOUS COUPON CONTRACTS FROM THE RULE 23 (b)(2) CLASS.

A. The District Court Did Not Abuse Its Discretion In Holding That Rule 23(d)(2) Notice Was Not Required.

The District Court certified the plaintiff class as a Rule 23 (b)(2) class action. App. 178a, 181a-182a. The class represented by the consumers herein consists of

> "all persons presently indebted to the W. T. Grant Company on coupon contracts signed in Connecticut and on which the actual annual percentage rate of interest exceeds twelve percent, excluding those debtors for or against whom the common questions presented by Counts I, II, IV, V, IX, X and XII have been adjudicated prior to the commencement of the instant action." App. 182a.

For the protection of the consumer class the District Court ordered

> "(7) That the defendant be and is hereby permanently enjoined from entering hereafter into any coupon contracts in Connecticut without first providing required truth-in-lending disclosures."
>
> ...
>
> "(9) That the defendant be and is hereby permanently enjoined from collecting any further payments under outstanding coupon contracts made in Connecticut, and from entering hereafter into any coupon contracts in Connecticut on which the annual percentage rate exceeds twelve percent." App. 183a.

The Court explained:

> "In so ruling, the Court is necessarily of the view that the prospective equitable relief sought is of genuine and substantial concern, cf. 3B Moore's Federal Practice ¶23.45[1] at 23-708-23-709 (2d Ed. 1969), and is not a merely secondary aspect of a case 'in which the appropriate final relief relates exclusively or predominantly to money damages',

Advisory Committee's Note, Proposed Rules of Civil Procedure, 39 F.R.D. 98, 102 (1965), compare Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 564 (2 Cir. 1968)..." App. 167a.

The Company does not challenge the District Court's issuance of injunctive relief, without ordering Rule 23(d)(2) notice, prohibiting it from entering into coupon contracts in Connecticut without first providing required truth-in-lending disclosures. Appellant's Brief, 48-49. Rather, the Company challenges the issuance of the permanent injunction, without Rule 23(d)(2) notice, only insofar as it relates to collection of outstanding usurious coupon accounts. The District Court explained:

> "This Court has concluded, however, that formal notice to absent members of a Rule 23(b)(2) class is mandatory only when obviously demanded by fundamental considerations of due process, cf. Lynch v. Household Finance Corp., 360 F. Supp. 720, n.3 at 722 (D. Conn.

1973), e.g., to insure 'protection of the members of the class or...the fair conduct of the action', cf. Rule 23(d)(2), Fed. R. Civ. P. This is not such a case, for the Court has no doubt that the plaintiff class is well and effectively represented. It cannot be reasonably assumed that Eisen III expresses strict notice requirement standards equally applicable to Rule 23(b)(2) claims, for such an interpretation would render pointless the explicit suggestion of the Court of Appeals that pursuit of 'prospective injunctive relief' under Rule 23(b)(2) be considered more frequently as a desirable alternative to mass damage suits under Rule 23(b)(3) as involving a 'relatively simply and inexpensive' procedure. See Eisen v. Carlisle & Jacquelin, supra, 479 F.2d at 1020. Since Eisen III neither dictates nor counsels wholesale departure from this Court's established approach to notice in Rule 23(b)(2) actions, plaintiffs may proceed on the class claims certified herein without providing notice to the class. See, e.g. Barros v. Walsh, Civil No. B-482 (D. Conn. 1973). But absent notice, the nature of any equitable relief sought for the class deserves close scrutiny, because the Eisen III alternative may not be fairly read as extending beyond the bounds of traditionally prospective relief in equity. Plaintiff's prayer for injunctive relief includes a request for an order compelling the return of monies allegedly collected unlawfully. While such an application has formerly been no bar to prosecution of a Rule 23(b)(2) class suit, cf. Solman vs. Shapiro, 300 F. Supp. 409 (D. Conn.), aff'd, 396 U.S. 5 (1969), plaintiffs are in reality seeking extensive class-wide monetary relief; whether the class refund claim is technically denominated a claim for equitable relief or for damages, pursuit of that measure of relief should be accompanied by provision of notice as prescribed by Eisen III as long as that decision remains the law of this Circuit." App. 168a-169a.

The consumers submit that the decision below accords with Rule 23, F.R.C.P. Cf. Eisen v. Carlisle and Jacquelin, 417 U.S. 156 (1974). The Advisory Committee stated:

> Subdivision (d)(2) does not require notice at any stage, but rather calls attention to its availability and invokes the court's discretion. In the degree that there is cohesiveness or unity in the class and the representation is effective, the need for notice to the class will tend toward a minimum. Advisory Committee's Note, 39 F.R.D. 98, 106 (1966).

This Rule 23 sets forth clear standards concerning notice requirements for actions qualifying under its provisions. Eisen v. Carlisle and Jacquelin, supra, explicitly held:

> "We are concerned here only with the notice requirements of subdivision (c)(2), which are applicable to class actions maintained under subdivisions (b)(3). By its terms, subdivision (c)(2) is inapplicable to class actions for injunctive and declaratory relief maintained under subdivision (b)(2)." 417 U.S. at 177, n.14.

The District Court's decision that notice was not required in this case is supported by the vast majority of Circuit and District Court decisions.[21] Furthermore, the rule is well settled in the District of Connecticut that in Rule 23(b)(2) class actions the notice requirements of subsection (c)(2) are inapplicable.[22]

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21. Yaffe v. Powers, 454 F.2d 1362, 1366 (1 Cir. 1972); Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122, 1125 (5 Cir. 1969(; Giguere v. Affleck, 370 F. Supp. 154, 159 (D.R.I. 1974); Boddie v. Wyman, 323 F. Supp. 1189 (N.D.N.Y. 1970), aff'd, 434 F.2d 1207 (2 Cir. 1970) aff'd 402 U.S. 991 (1971); Rosado v. Wyman, 322 F. Supp. 1173, 1192-93 (E.D.N.Y. 1970), aff'd, 437 F.2d 619 (2nd Cir. 1970), aff'd, 402 U.S. 991 (1971); Almenares v. Wyman, 334 F. Supp. 512, 518-519 (S.D.N.Y. 1971), aff'd, 453 F.2d 1075, 1084-1085 (2 Cir. 1971); cert. den. 405 U.S. 944 (1972); Williams v. Local 19 Sheet Metal Workers Int. Assn., 59 F.R.D. 49, 55-56 (E.D.Pa. 1973); Francis v. Davidson, 340 F. Supp. 351, 361 (D.Md. 1972); Mungin v. Florida East Coast Railway Co., 318 F. Supp. 720, 732 (M.D.Fla. 1970) aff'd 441 F.2d 728 (5 Cir. 1971); Johnson v. City of Baton Rouge, 50 F.R.D. 295, 299 (E.D.La. 1970); Hooks v. Wainwright, 352 F. Supp. 163, 166 (N.D.Fla. 1972). See also Fujishima v. Board of Education, 460 F.2d 1355, 1360 (7 Cir. 1972); 3 B Moore's Federal Practice ¶2372, p. 23-1421 (2nd Ed. 1974); 7 A Wright & Miller, Federal Practice and Procedure §1793 p. 202.

22. Lynch v. Household Finance Corporation, 360 F. Supp. 720, 722n.3 (D. Conn. 1973); Wilczynski v. Harder, 323 F. Supp. 509, 512n.3 (D. Conn. 1971); Solman v. Shapiro, 300 F. Supp. 409, 411n.1 (D. Conn. 1969) aff'd 396 U.S. 5 (1969); Boddie v. Connecticut, 329 F. Supp. 844 (D. Conn. 1971).

The consumers submit that the District Court did not abuse its discretion pursuant to Rule 23(d)(2).

B. The District Court Properly Enjoined The W. T. Grant Company From Violating The Usury And Truth-In-Lending Laws, And From Reaping The Fruits Of Its Past Violations.

The District Court enjoined the W. T. Grant Company from collecting any further payments under currently outstanding coupon contracts executed in Connecticut, and prohibited the Company from entering into new coupon contracts which violated the usury and truth-in-lending laws. App. 179a. The Court "carefully weighed" the need for injunctive relief before holding:

> "...that defendant's avowed unilateral and temporary discontinuance of the plan provides inadequate assurance against future violations, cf. United States v. W. T. Grant Co., 345 U.S. 629, 632-633 (1953), that the administrative consent order is too circumscribed to be regarded as a satisfactory alternative to direct action by this Court, and that the difficulty apparently experienced by the parties in agreeing to any partial restraint on collection proceedings pending the outcome of the case strongly suggests the prudence of extending unambiguous and affirmative class-wide relief." App. 179a-180a.

Although the Company "voluntarily" terminated its coupon credit scheme on January 1, 1973, insofar as it involved the selling of new coupons, the District Court properly enjoined further violations of the usury and truth-in-lending laws because nothing in the record provided adequate assurance against future violations:

> "This unilateral action is not the equivalent of a promise made to an adversary as part of a settlement. Nor is it a stipulation made in court binding the declarant forever to adhere to a new policy based on a public confession of earlier unconstitutional action. Nor does it offer financial recompense to

those plaintiffs who may have suffered damage caused by defendant's unlawful acts. Under these circumstances, plaintiffs have not lost their standing to invoke at least equitable relief, Hecht Co. v. Bowles, 321 U.S. 321, 64 S.Ct. 587, 88 L.Ed. 754 (1944), not to mention the continued vitality of their claim for monetary compensation, remedial and punitive." Aurora Education Association East v. Board of Education of Aurora Public School District No. 131 of Kane County, Illinois, 490 F.2d 431, 435 (7 Cir. 1974).[23]

The Supreme Court has recently reaffirmed the broad discretionary power of a trial court to fashion appropriate equitable remedies:

"In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15, 27n10, (1971). Moreover, in constitutional adjudication as elsewhere, equitable remedies are a special blend of what is necessary, what is fair, and what is workable. 'Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.' Brown v. Board of Education, 349 U.S. 294, 300 (1955). Mr. Justice Doublas, speaking for the Court, has said,

'The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.' Hecht Co. v. Bowles, 321 U.S. 321, 329-330 (1944).

"See also Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946).

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23. See also, Carey v. White, 375 F. Supp. 1327, 1330 (D.Del. 1974), and Consumers Union of U.S., Inc. v. Theodore Hamm Brewing Co., 314 F. Supp. 697, 701 (D.Conn. 1970).

> "In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests, notwithstanding that those interests have constitutional roots." Lemon v. Kurtzman, 411 U.S. 192, 200-201 (1973).

In an analogous situation involving the J. C. Penney Company, the Wisconsin Supreme Court took

> "judicial notice of the widespread use of the revolving charge account and of the large number of Wisconsin citizens affected by these practices. We have no hesitancy in endorsing an injunction against the usurious practices which clearly constitute a public nuisance here and should be discontinued." State of Wisconsin v. J. C. Penney Co., supra, 48 Wis. 2d at 155, 179 N.W. 2d at 657.[24]

The serious injury which the Company's coupon plan inflicted on Connecticut residents, occurring over an extended period of time, justified the injunction issued by the District Court against further collections on coupon contracts. See, Fairfield Credit Corp. v. Donnelly, 158 Conn. 543, 550-552, 264 A.2d 547, 550-551 (1969).

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24. In a Connecticut case involving a large number of people (20,000-50,000) who were expected to attend a so-called "rock-festival", the Superior Court concluded that the festival should be enjoined as a public nuisance because of the potentially widespread deleterous effect on the personal and property rights of the townspeople. Planning and Zoning Commission v. Zemel Brothers, Inc., 29 Conn. Supp. 45, 270 A.2d 562 (Conn. Superior Ct. 1970).

CONCLUSION

For the foregoing reasons, the decision and judgment of the District Court should be affirmed in all respects.

Respectfully submitted,

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Dated: December 27, 1974

74-2131

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Mildred Ives, Moira Robertson & Joyce Chapman,
on behalf of themselves and others similarly situated,

Plaintiffs-Appellees,

v.

W. T. Grant Company,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

ADDENDUM A.

1. Excerpts from FTC Informal Staff Opinion Letter of July 21, 1971, C.C.H. Consumer Credit Guide, ¶30705 (1969-1973 transfer binder).

2. Excerpts from FTC Letter of September 19, 1974, No. 842, C.C.H. Consumer Credit Guide, ¶31164 (1969-1973 transfer binder).

3. FTC Proposed Complaint against the W. T. Grant Company release dated December 7, 1972.

4. Consent Order - FTC and W. T. Grant Company dated October 12, 1973.

5. Excerpts from FTC Informal Staff Opinion Letter of August 26, 1969, C.C.H. Consumer Credit Guide, ¶30298 (1969-1973 transfer binder).

6. Excerpts from FTC Letter of June 27, 1969, by Milton W. Schober Assistant Director, C.C.H. Consumer Credit Guide, ¶30068 (1969-1973 transfer binder).

[¶ 30,702] FEES FOR MOTOR VEHICLE DOCUMENTS

This is in response to your letter regarding fees automobile dealers charge for preparing various documents relating to the sale of automobiles. You question whether Regulation Z would compel dealers to include such fees in either the amount financed or the finance charge.

The fees to which you refer are the fees assessed for preparing the documents relating [to] the transfer of title to an automobile, the application for a new certificate of title, together with the affidavit for the use tax covering the purchase or sale of the automobile. Notary's fees are also involved. However, you indicate that such fees are assessed whether or not the transaction is a credit transaction. In view of this, such fees would not need to be included in the finance charge. However, if they are not paid in cash, but are financed, they would have to be included in the "amount financed" and disclosed as "other charges" as required by § 226.8(c)(4) [¶ 3567] of Regulation Z.

Excerpts from FRB Letter of May 28, 1971, No. 482, by Griffith L. Garwood, Attorney.

[¶ 30,703] KENTUCKY INVESTIGATION FEE

You inquire whether an investigation fee authorized by Kentucky statute may be excluded from the finance charge under Truth in Lending. Section 226.4(a) [¶ 3518] of Regulation Z provides that the finance charge is "the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of customer to the creditor or to a third party, including any of the following types of charges: . . . fee for an appraisal, investigation, or credit report." That language is derived from a similar provision in Section 106 of the Truth in Lending Act. Consequently, in our opinion you would not be in compliance with the Truth In Lending Act if the Kentucky investigation fee was excluded from the disclosure of the "finance charge."

Excerpts from FRB Letter of July 1, 1971, by Griffith L. Garwood, Chief, Truth in Lending Section.

[¶ 30,704] USE OF "INTEREST" IN FRB ANNUAL REPORT

You are concerned about the use of the word "interest" in the Board's Annual Report on Truth in Lending in describing the results of the survey of consumer awareness. You question whether the use of the term is appropriate in view of its exclusion from the Truth in Lending Act, and in connection with time sale purchases. The general use of the term interest in the report arose from the need to structure the survey questions in a form which would be as understandable as possible by the consumers being surveyed. It appeared to us that the survey results would be most accurate if the questions were phrased in terms of "interest" rates rather than "annual percentage rates" (which unfortunately are not yet universally understood by the public) or in the more precise legal terms such as "time price differential." The textual use of the word "interest" in describing the survey results in the Annual Report was simply a reflection of the questions used in the survey. Nevertheless, your point is well taken, and we appreciate having the benefit of your views.

Excerpts from FRB Letter of July 6, 1971, by Griffith L. Garwood, Chief, Truth in Lending Section.

[¶ 30,705] CASH PRICE AND UNPAID BALANCE DISCLOSURES

Thank you for your letter of July 15, 1971 regarding my previous comments on the model Truth in Lending disclosure. I note that the two items in question are purely technical and that neither deprives the consumer of essential information required by the Act and Regulation to be disclosed. I also note, however, that suc-

cessful consumer class actions under Section 130 of the Act have been brought for similarly technical violations of the Regulation.

[*Cash Price*]

Use of the term "total cash price" in place of the required term "cash price" is certainly not misleading. It does not deprive the consumer of the information required to be disclosed (which is the amount disclosed, not their descriptive terminology) and one can reason one's way to the reasonableness of using that term in the manner of the model form. However, uniform terminology is one of the standards of the Regulation and therefore certain terminology (including "cash price") has been made mandatory regardless of the innocence or reasonableness of other similar terms to describe the required amount disclosed. For this reason, the required term should be used.

[*Unpaid Balance*]

Failure to employ the term "unpaid balance" on the model form at page 22 of "What You Ought to Know About Regulation Z" [CCH CONSUMER CREDIT GUIDE ¶ 3853] is an error of omission. The forms contained in the Initial Decision of the Hearing Examiner in *Matter of Zale Corporation*, Docket 8810 [CCH CONSUMER CREDIT GUIDE ¶ 20,688], are merely evidentiary and were not introduced or relied upon for the proposition that "unpaid balance" is not a required disclosure where appropriate under the Regulation. The enforcement position of this Division has been that a required term must also be used to describe the same amount, whenever: (a) that required term is prescribed by the Regulation as descriptive of an amount which is the sum, product, or difference of two or more amounts, if the sum, product, or difference is itself required to be disclosed in that transaction; or (b) the required term is prescribed by the Regulation as descriptive of an amount required by the Regulation to be used in computing another amount itself required to be disclosed in that transaction. For example, in the following transaction:

$250.00	cash price
50.00	cash downpayment
200.00	unpaid balance of cash price
20.75	freight and handling
220.75	unpaid balance (amount financed)
20.00	FINANCE CHARGE
240.75	total of payments

etc. .....

The term "unpaid balance" is required to describe the amount $220.75 because the Regulation describes the "unpaid balance" as the sum of the "unpaid balance of cash price" plus the total of all other charges not included in the finance charge, and requires disclosure of the "unpaid balance." The term "amount financed" is also required to describe the amount $220.75 because the Regulation requires the amount financed to be used in computing the "Annual Percentage Rate" (required to be disclosed in the sample transaction but not shown above), and requires disclosure of the "amount financed." It is true that the consumer has the information required so long as the amount $220.75 is disclosed, and that amount is meaningfully described so long as either term, "unpaid balance" or "amount financed," is employed. It is also true that for most purposes that this would be sufficient. However, the consumer, lawyer, scholar or other interested persons who wishes to compare the disclosures with the words of the Regulation for one purpose or another needs the term "unpaid balance" to know that the proper amounts have been used in computing that amount and also needs the term "amount financed" to determine which amount has been used in computing the "Annual Percentage Rate." Without disclosure of both amounts, one or the other of those two desired pieces of information will be left to a well-educated guess. Therefore, the requirement to employ both terms is not, for legal accounting purposes, so redundant as it may appear for everyday use by the consumer in the normal credit transaction.

You are correct in stating that the "unpaid balance" should include the sum of *all* other charges including charges for voluntary credit life insurance. However, it should not include the "net old balance." Thus, inclusion of the "unpaid balance" after item 10 would not be appropriate unless the "net old balance" were to follow the "unpaid balance."

Excerpts from FTC Informal Staff Opinion Letter of July 21, 1971, by Alan M. Silbergeld, Attorney, Division of Special Projects.

A-2

you describe, it would appear that no contractual relationship is created until the customer accepts and signs the security agreement; therefore, Truth in Lending disclosures would not be required at the time the refundable deposit is made. It is sufficient for purposes of the Regulation to make the disclosures before the customer binds himself to the transaction by signing the security agreement. Of course, in determining whether a contractual relationship is created, it is necessary to look to the law of the jurisdiction in which the transaction takes place. Thus, if a contractual relationship is created under State law at the time the deposit is made, then there would be consummation at that time for purposes of Truth in Lending.

I am enclosing a copy of letter number 623 [¶ 30,872] relating to a somewhat similar problem in connection with consummation of credit sales in automobile purchase transactions, which you may find relevant to this question as well.

Excerpts from FRB Letter of September 13, 1974, No. 841, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

[¶ 31,164] USE OF THE TERM "UNPAID BALANCE"

[Y]our letter of February 8, in which you solicited our comments on whether the term *unpaid balance* is a required disclosure under § 226.8(c) [¶ 3567] of Regulation Z where there are "other charges" but no prepaid finance charge or required deposit balance involved in the credit transaction. Your inquiry included two U. S. District Court cases which have held that the term in question is a required disclosure: *Wehmaker v. W. T. Grant Co.* [CCH CONSUMER CREDIT GUIDE ¶ 98,774] and *Mitchell v. Dixie Furniture Company*, both from the Northern District of Georgia, Atlanta Division; neither of these cases has been appealed.

In addition to the two cited court decisions, the Federal Trade Commission staff has concluded that the term *unpaid balance* is a required disclosure when the transaction involves "other charges" included in the amount financed but not part of the finance charge (see CCH ¶ 30,705). We appreciate your view that the definition of the term *amount financed* leaves little doubt as to what it includes on a disclosure statement. However, use of the term *unpaid balance* does offer some assistance to the consumer in understanding the mathematical progression on the Truth in Lending disclosure statement. Therefore, in view of the recent court decisions and other Federal agency opinions, we would advise creditors to incorporate the term into disclosure statements, even though the disclosure statement illustrated on page 22 of the pamphlet, *What You Ought to Know About Truth in Lending*, may indicate that such a disclosure may not be required in such circumstances.

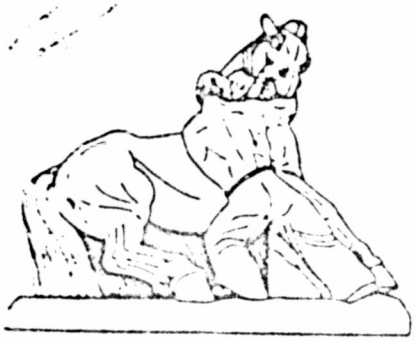
Finally, you suggest as a response to the two decisions cited, that the Board amend § 226.8(c) and make use of the term *unpaid balance* optional to the creditor where there are no prepaid finance charges and required deposit balances. For the reason cited in the preceding paragraph, we feel that on balance it would not be appropriate to recommend to the Board an amendment to the Regulation in this respect at this time.

Excerpts from FRB Letter of September 19, 1974, No. 842, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

[¶ 31,165] CREDIT INSURANCE OPTIONS

This is in response to your letter of June 24, inquiring whether a disclosure form, which offers the choice of credit life insurance only, credit life and disability insurance combined, or neither, is sufficient to offer the borrower a meaningful choice of insurance coverage and to meet the disclosure requirements of § 226.4(a)(5) [¶ 3518] of Regulation Z. You also ask whether it is necessary to disclose the cost of credit life insurance alone in every case, even when the borrower has requested both credit life and credit disability insurance and the cost of the combined coverage is disclosed.

It is staff's opinion that the insurance disclosure requirements under § 226.4(a)(5) were written for the purpose of describing those situations in which a creditor need not include the cost of credit life and disability insurance in the finance charge computation. Under this section, when insurance



FEDERAL TRADE COMMISSION NEWS

WASHINGTON, D. C. 20580

For further information, call: David H. Buswell (202) 962-7144

FOR RELEASE after 7:00 A. M., EST, Thursday, December 7, 1972

PROPOSED FTC COMPLAINT ANNOUNCED AGAINST W.T. GRANT CREDIT PLAN

The FTC today announced its intention to issue a complaint under its consent order procedure alleging that W.T. Grant Company, a nationwide retail chain, has used deceptive tactics to sell its coupon book credit plan.

The proposed complaint also alleges that Grant has sold property insurance in a deceptive manner; and that as a result of the 1168-store chain's credit life and credit accident and health insurance sales practices, it is making inaccurate credit cost disclosures, which violates the Truth in Lending Act.

Under the coupon book plan, Grant offers books containing coupons which can be exchanged for goods and services at its stores. Consumers who purchase the coupons sign a retail installment contract obligating them to make equal monthly payments for the book, credit insurance, if selected, and precomputed finance charges.

According to the proposed complaint, the advertising and sales floor solicitations which W.T. Grant uses to invite consumers to open credit accounts, as well as the practices of the W.T. Grant employees who actually accept credit applications, mislead consumers who sign coupon book contracts into believing that they are signing revolving (open end) credit agreements or that the coupon book account is a form of open end credit. It is also alleged that Grant employees have told consumers who could have obtained open end accounts that the company required them to maintain a coupon book account first. All these representations, the complaint states, are false, misleading and deceptive.

The proposed complaint also states that the retail chain has used procedures which have led consumers to sign a "voluntary insurance agreement" in the mistaken belief that their signatures were required to open their credit accounts. These practices, it is alleged, violate Section 5 of the Federal Trade Commission Act in connection with the sale of property insurance. The complaint additionally states that the consumers' signatures obtained in this manner do not constitute the affirmative written indication of the desire to

(more)

NOTE: The FTC issues a complaint when it has "reason to believe" that the law has been violated. Such action does not imply adjudication of the matters alleged.

F-1207

obtain credit life and credit accident and health insurance which the Truth in Lending Act requires if the cost of such insurance is not included in the "finance charge". Grant's exclusion of these insurance premiums from the "finance charge" makes its Truth in Lending disclosures inaccurate, the complaint alleges.

The proposed order would forbid the practices which have allegedly led consumers to purchase coupon books mistakenly and would require Grant to make an affirmative disclosure to consumers before asking them to sign a coupon book contract. The disclosure reads, in part:

> W.T. Grant Company offers an OPEN END CHARGE PLAN and a COUPON BOOK PLAN. [as applicable] YOU QUALIFY FOR EITHER PLAN. [or] AT THIS TIME, YOU ARE ONLY ELIGIBLE FOR THE COUPON BOOK PLAN. The Coupon Book Plan is *not* an open end or revolving credit plan. The coupons are like a loan of money which can only be spent at Grant's. . . .

If the company wishes to charge for property insurance or to exclude the cost of credit life and credit accident and health insurance from the "finance charge", the proposed order also requires it to inform consumers that the insurance is optional and need not be purchased to obtain credit.

The proposed respondent, whose office is located at 1515 Broadway, New York, New York, has been given the opportunity to advise the Commission whether it is interested in having the proceeding disposed of by the entry of a consent order.

DETERMINATION TO ISSUE COMPLAINT
(File No. 682 3487)

###

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of W. T. GRANT COMPANY, a corporation.	)	DOCKET NO.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that W. T. Grant Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1515 Broadway, New York, New York.

PARAGRAPH TWO: Respondent owns, operates and controls a chain of approximately one-thousand one-hundred sixty-eight (1168) retail stores, located in approximately forty-three (43) states of the United States. Respondent is now and has for some time in the past been engaged in the advertising, offering for sale, sale and distribution of various articles of merchandise and services to the public at retail and in the regular extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of PARAGRAPHS ONE and TWO hereof are incorporated by reference in Count I as if fully set forth verbatim.

PARAGRAPH THREE: In the course and conduct of its aforesaid business, respondent formulates, directs and controls the acts and practices of its retail stores. Respondent causes advertising mats, memoranda, policy directives, consumer credit contracts and other documents and communications to be transmitted by the United States mails and by other interstate mechanisms to and from respondent's principal office and place of business and its retail stores located in other states. Respondent sells and distributes merchandise and credit devices in commerce by causing them to be shipped to and from its warehouses and from the places of business of its various suppliers to its warehouses and retail stores for distribution to and purchase by the general public, located in states other than those from which such shipments originate. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in merchandise and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PARAGRAPH FOUR: In the ordinary course and conduct of its business, respondent offers to consumers applying for credit coupon books in denominations from $20 to $200, the coupons in which are exchangeable for merchandise or services at any of respondent's retail stores. Respondent sells these coupon books on an other than open end credit basis by means of a retail installment credit coupon book contract, hereinafter referred to as the coupon book contract. Consumers who sign a coupon book contract receive a coupon book and are obligated to pay to respondent, in equal monthly installments, the cash price of the coupon book, plus charges for property, credit life, and credit accident and health insurance, if selected, plus the finance charge computed on the sum of such cash price and insurance charges. The due date of the first payment is thirty days after coupons from the book are first exchanged for merchandise or services.

PARAGRAPH FIVE: In the course and conduct of its business, respondent has engaged in acts and practices, of which the following are typical and illustrative, but not all inclusive, for the purpose of inducing applicants for credit to sign coupon book contracts:

1. In advertisements which it has published or caused to be published, respondent has invited consumers to open credit accounts. Typical and illustrative, but not all inclusive, of such advertisements are the following published in various media:

a. In newspapers of general circulation:

"Select one of these gifts when
you open a new account for
$176 or MORE
or add the same amount to your
existing credit account"

"ENJOY BETTER LIVING WITH GRANTS CREDIT"

b. In leaflets distributed through the mails:

"WIN $200 in merchandise
Fill in this combination of application for
credit and for free drawing....

"AND AT THE SAME TIME... OPEN YOUR CREDIT
ACCOUNT (or add on to your open or inactive
Grants Credit Account)..."

c. In leaflets distributed by respondent's employees to customers at respondent's retail stores:

"Dear Customer:
We'd love to have you
become a part of our growing
Grant credit family.
Why not apply today.

"ENJOY BETTER LIVING WITH GRANTS CREDIT
.Bring or mail in the application in this
pamphlet. No postage is necessary.
.Always prompt service. Most applications
can be approved in a matter of minutes.
.Credit can be used to purchase anything in
the store."

2. Respondent's employees have asked customers in respondent's retail stores, "Do you have an account with us?" or questions of similar import. These employees have offered to take applications for credit from customers who have given negative replies to such questions.

3. When consumers have come to the credit department in respondent's retail stores and requested a credit account, respondent's employees have presented a coupon book contract to those applicants who qualify for credit and have not made any statements about the type of credit being offered before asking such applicants to sign the document.

4. Respondent's employees have given affirmative replies to consumers who have asked whether the coupon book account is an open end credit plan. Typical and illustrative of those replies, but not all inclusive thereof, are those which are suggested in the following instructions issued by respondent:

   a. "Suppose the customer answers:

      IS THIS A 30 DAY CHARGE ACCOUNT?

      How would you reply?

      THIS CAN BE USED JUST LIKE A 30 DAY CHARGE ACCOUNT."

   b. "Suppose the customer answered:

      IS THIS LIKE MY SEARS CHARGE PLATE?

      How would you reply?

      YES, WE HAVE AN ACCOUNT LIKE THAT MRS. JONES, BUT WE'RE OFFERING YOU OUR MOST POPULAR PLAN."

5. Respondent's employees have represented to consumers who qualify for respondent's open end credit plan, and have requested such credit, that respondent requires new customers to open a coupon book account before they can obtain an open end credit account.

PARAGRAPH SIX: By and through the statements, representations, acts and practices set forth in PARAGRAPH FIVE above and various others of similar import not set forth herein, respondent and its employees have represented, directly and by implication, that:

1. Consumers who apply for credit from respondent will be offered open end credit accounts.

2. The document presented to qualified applicants for credit for their signatures is an agreement for the extension of open end credit.

3. The coupon books are devices issued pursuant to an agreement for the extension of open end credit.

4. A consumer is required to have had a coupon book account before he can obtain open end credit from respondent.

PARAGRAPH SEVEN: In fact:

1. Consumers who apply for credit from respondent are not offered open end credit accounts but are offered coupon book accounts.

2. The document presented to qualified applicants for credit for their signatures, the coupon book contract, is an agreement for the extension of credit other than open end.

3. Coupon books are not treated in the coupon book contract as devices issued pursuant to an agreement for the extension of open end credit, but are treated as goods and are sold by means of a retail installment contract.

4. Consumers who qualify for open end credit from respondent are not required to have had a coupon book account before they can obtain open end credit from respondent.

Therefore, the acts, practices and representations set forth in PARAGRAPHS FIVE and SIX above are false, misleading and deceptive.

PARAGRAPH EIGHT: In a substantial number of instances, respondent has charged consumers for property insurance written in connection with credit sales. Typical and illustrative, but not all inclusive, of the circumstances in which such charges were incurred is the following:

1. Prior to presenting the retail installment contract to the consumer, respondent's employees have included the charge for property insurance in the amount financed.

2. Without authority from the consumer, respondent's employees have placed a check next to the statement in the contract, "I wish Property" and have placed the date in the designated position in the "Insurance Agreement" in the contract.

3. Respondent's employees have presented the contract to the consumer and indicated to the consumer the two places where he is to sign the contract without explaining to the consumer that one of the signatures is being requested in order to execute an "Insurance Agreement".

PARAGRAPH NINE: Since, in the circumstances stated in the preceding paragraph, a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that their signatures were required in order to obtain consumer credit and without knowing that they were signing an "Insurance Agreement", the acts and practices set forth in PARAGRAPH EIGHT above are false, misleading and deceptive.

PARAGRAPH TEN: In the course and conduct of its business, and at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of articles of merchandise and services of the same general kind and nature as those sold by respondent.

PARAGRAPH ELEVEN: Respondent's use of the aforesaid unfair and deceptive statements, representations and practices, and its failure to disclose material facts, as alleged above, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous belief that those statements and representations were true and complete, and into the purchase or retention of, and payment for, substantial quantities of coupon books and property insurance written in connection with credit sales.

PARAGRAPH TWELVE: The acts and practices of respondent alleged above were and are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of PARAGRAPHS ONE and TWO above are incorporated by reference in COUNT II as if fully set forth verbatim.

PARAGRAPH THIRTEEN: Subsequent to July 1, 1969, in the ordinary course and conduct of its business, and in connection with its credit sales, as "credit sale" is defined in Regulation Z, respondent, through its employees, has caused consumers to execute retail installment contracts.

PARAGRAPH FOURTEEN: In a substantial number of instances, respondent has charged consumers for credit life and credit accident and health insurance written in connection with credit sales. Typical and illustrative, but not all inclusive, of the circumstances in which these insurance charges were incurred is the following:

1. Prior to presenting the retail installment contract to the consumer, respondent's employees have included the cost of credit life and accident and health insurance in the amount financed, as "amount financed" is defined in Regulation Z.

2. Without authority from the consumer, respondent's employees have placed a check next to the statement in the contract, "I wish Credit Life and Accident & Sickness" and have placed the date in the designated position in the "Insurance Agreement" in the contract.

3. Respondent's employees have then presented the contract to the consumer and have indicated to the consumer the two places where he is to sign the contract without explaining to the consumer that one of the signatures is being requested in order to execute an "Insurance Agreement".

PARAGRAPH FIFTEEN: In the circumstances set forth in the preceding paragraph:

1. a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that their signatures were required in order to obtain consumer credit and without knowing that they were signing an "Insurance Agreement"; and

2. a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that credit insurance was required by respondent.

Those consumers' signatures on the "Insurance Agreement" do not constitute the specific dated and separately signed affirmative written indication of the desire to obtain credit life and credit accident and health insurance coverage which is required by Section 226.4(a)(5)(ii) of Regulation Z if the cost of such insurance is not included in the finance charge. Therefore, respondent has:

1. failed to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z.

2. failed to compute and disclose the "annual percentage rate" accurately to the nearest quarter of one percent as required by Sections 226.5 and 226.8 of Regulation Z.

PARAGRAPH SIXTEEN: Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failure to comply with Sections 226.4, 226.5 and 226.8 of Regulation Z constitute a violation of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this day of , A.D., 197 , issues its complaint against said respondent.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the day of A.D. 19 , at o'clock is hereby fixed as the time and

as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the hearing examiner, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to the respondent named hereinafter in the form of order might be inadequate fully to protect the consuming public or to protect the competitive conditions within the general retail merchandise industry, the Commission may order such other relief as it finds necessary or appropriate.

I

IT IS ORDERED that respondent W. T. Grant Company, a corporation, and respondent's agents, representatives, employees and successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of merchandise or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

a. the coupon book contract is an agreement for the extension of open end credit;

b. coupon books are devices issued pursuant to an agreement for the extension of open end credit; or

c. a consumer is required to have had a coupon book account before he can obtain open end credit from respondents.

2. Presenting a coupon book contract to, or adding on to the coupon book obligation of, any consumer unless prior thereto respondent has:

a. presented to the consumer the following statement, printed in at least 12-point bold-faced type on one side of a single sheet of paper:

"W. T. Grant Company offers an OPEN END CHARGE PLAN and a COUPON BOOK PLAN. [as applicable] YOU QUALIFY FOR EITHER PLAN. [or] AT THIS TIME, YOU ARE ONLY ELIGIBLE FOR THE COUPON BOOK PLAN. The Coupon Book Plan is not an open end or revolving credit plan. The coupons are like a loan of money which can only be spent at Grant's. One month after you first use the book, you begin paying, in equal monthly installments, the cash price of the coupon book, premiums for credit insurance if selected, and finance charges, which are computed on the full price of the coupon book plus any premiums. You can avoid finance charges only by paying for the entire book before the first payment date"; and

b. obtained an acknowledgment, signed and dated by the consumer, of his having received and read the aforesaid statement and provided the consumer with a copy thereof.

3. Presenting a second or subsequent coupon book contract to, or adding on to the coupon book obligation of, any consumer who had not previously been eligible for open end credit from respondent, unless respondent has obtained a credit application from said consumer within the previous twelve months and determined, on the basis of information contained in that application, that said consumer did not qualify for open end credit from respondent.

4. Charging any consumer for property insurance written in connection with any credit sale unless respondent has:

a. read and presented to the consumer the following statement printed in at least 12-point bold-faced type on one side of a single sheet of paper, which does not contain the credit agreement or any disclosures required by the Truth in Lending Act:

"Property insurance is entirely optional. You are not required to buy it to get credit."; and

b. obtained from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated by the consumer, of his having received and had read to him the aforesaid statement.

5. Checking the box next to the statement "I wish Property" on the retail installment contract; or otherwise making any mark, designation, or indication on any document in connection with any similar statement respecting the selection of property insurance.

6. Requesting any consumer to sign any document which purports to indicate the consumer's desire for property insurance without orally disclosing to the consumer the purpose for which his signature is being requested.

II

IT IS FURTHER ORDERED that respondent W. T. Grant Company, a corporation, and respondent's agents, representatives, employees, and successors and assigns, directly or through any corporate or other device, in connection with the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 CFR 226) of the Truth in Lending Act (P.L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to include and to itemize the amount of premiums for credit life and credit accident and health insurance as part of the finance charge, unless the amount of such premiums is excluded from the finance charge because of appropriate exercise of the option available pursuant to Section 226.4(a)(5) of Regulation Z.

2. Failing, prior to making any other written disclosures pursuant to Section 226.4(a)(5)(i) or obtaining any signature pursuant to Section 226.4(a)(5)(ii) of Regulation Z, to:

a. read and present to the consumer the following statement printed in at least 12-point bold-faced type on one side of a single sheet of paper separate from the credit agreement and any other disclosures required by the Truth in Lending Act: "Credit life and credit accident and health insurance are entirely optional. You are not required to buy this insurance to get credit."; and

b. obtain from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated by the consumer, of his having received and had read to him the aforesaid statement.

3. Checking the box next to the statement "I wish Credit Life and Accident & Sickness" on the retail installment contract; or otherwise making any mark, designation or indication on any document in connection with any similar statement respecting the selection of credit life and credit accident and sickness insurance.

4. Requesting any consumer to sign any document which purports to indicate his desire for credit life or credit accident and health insurance without orally disclosing to the consumer the purpose for which his signature is being requested.

5. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4 and 226.8 of Regulation Z.

6. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

7. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

IT IS FURTHER ORDERED that respondent shall, within ten (10) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the procedures used to determine whether a consumer qualifies for open end credit from respondent, and that respondent shall, at least thirty (30) days prior to instituting any changes in said procedures, notify the Commission of such proposed changes.

IT IS FURTHER ORDERED that respondent shall, one year after the date upon which this order becomes final and one year thereafter, file with the Commission a report, in writing, which shall include but not necessarily be limited to the following information: (1) the number of coupon book contracts and open end credit agreements signed in the previous year; (2) the number of consumers who have qualified for open end credit from respondent but chose to sign a coupon book contract during the previous year; (3) the number of consumers during the previous year who did not qualify for open end credit from respondent and who, having been presented with the statement set forth in Paragraph 2(a) of Part I of this order, did not sign a coupon book contract; and (4) the number of consumers during the previous year who, having previously been ineligible for open end credit from respondent, became eligible for and chose such credit.

IT IS FURTHER ORDERED that respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the making of respondent's policy concerning consumer credit, or engaged in offering to extend or the consummation of any extension of consumer credit, or engaged in the writing of property, credit life or credit accident and health insurance in connection with any consumer credit transaction, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

IT IS FURTHER ORDERED that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

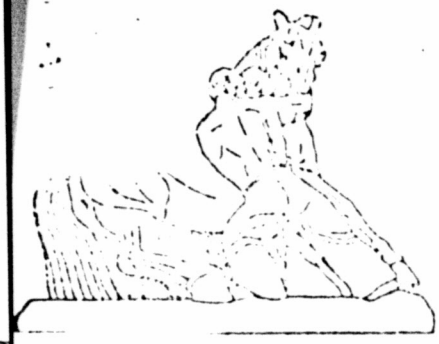
IT IS FURTHER ORDERED that respondent shall retain for two (2) years following its execution the original of any statement or disclosure the receipt of which must be acknowledged by any consumer pursuant to this order.

IT IS FURTHER ORDERED that responsent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth, in detail, the manner and form in which it has complied with the order to cease and desist contained herein.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint to be served by its Secretary and its official seal to be hereto fixed at Washington, D.C. this day of .

By the Commission.

Charles A. Tobin
Secretary



FEDERAL TRADE COMMISSION NEWS

WASHINGTON, D. C. 20580

For further information call: Office of Public Information (202) 962-7144

FOR RELEASE AFTER 7:00 A.M., EST, Tuesday, November 27, 1973

FTC ORDER BANS W. T. GRANT CO.
FROM DECEPTIVE PRACTICES

The Federal Trade Commission today provisionally accepted a consent order prohibiting W.T. Grant Co., a retail chain, from using deceptive tactics to sell its coupon book credit plan and requiring it to make written disclosures to consumers about the nature of the plan.

The agreed-to order also prohibits Grant, headquartered at 1515 Broadway, New York City, from selling property insurance in a deceptive manner and violating the Truth in Lending Act with respect to its sale of credit life and credit accident and health insurance. The consent order is essentially the same as the one which the Commission proposed when it issued its complaint last May 25. The complaint has since been withdrawn from litigation.

Under the coupon book plan, Grant offers books containing coupons which can be exchanged for goods and services at its stores. Consumers who purchase the coupons sign a retail installment contract obligating them to make equal monthly payments for the book, credit insurance, if selected, and precomputed finance charges.

The complaint alleged that, through advertising, sales floor solicitations, and the practices of its employees, consumers who signed coupon book contracts were misled into believing that they were signing a revolving (open end) credit agreement or that the coupon book account is a form of open end credit. Further, Grant employees allegedly told some consumers who could have obtained open end accounts that the company required them to obtain a coupon book account first.

A further allegation in the complaint is that the retail chain used procedures which misled consumers into believing that their signatures on a "voluntary insurance agreement" were necessary to obtain credit. The complaint alleged that these practices violate Section 5 of the FTC Act in connection with the sale of property insurance.

The complaint also stated that consumers' signatures obtained in this manner do not constitute the "affirmative written indication" of the desire to obtain credit life and credit accident and health insurance which the Truth in Lending Act requires if the cost of such insurance is not included in the "finance charge." Grant's exclusion of these insurance premiums from the "finance charge" and corresponding "Annual Percentage Rate" makes these Truth in Lending disclosures inaccurate, it was alleged.

The order requires the written disclosure required by the order to consumers before offering them credit. The disclosure reads, in part:

1-1127

(more)

W.T. Grant Company offers two different credit plans to qualified customers - an OPEN END CHARGE ACCOUNT and a COUPON BOOK PLAN. The coupon Book Plan is NOT an open end or revolving credit plan.

The disclosure goes on to set out the differences between Grant's coupon books and charge accounts and includes information about the kinds of credit involved, payments, and computation and avoidance of finance charges.

If Grant wishes to offer voluntary property insurance or to exclude the cost of credit life and credit accident and health insurance from the "finance charge," the proposed order also requires it to inform consumers, both orally and in writing, that the insurance is optional and need not be purchased to obtain credit. The company is also required to comply with all other Truth in Lending disclosures.

Commissioner Jones dissented from the agreed-to order. She stated: "I dissent to this consent order because in my judgment it does not redress the basic unfairness of the Grant coupon plan which places low income consumers [illegible] disadvantageous credit terms which they have no means to avoid. The disclosures required by the order do not serve to mitigate or alleviate this unfairness."

The proposed consent order will remain on the public record from November 27, 1973 through December [illegible], 1973. Comments from the public received during this period will become part of the public record. The FTC may withdraw its acceptance of the agreement upon further consideration.

The agreement is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law. When issued by the Commission on a final basis, a consent order does carry the force of law with respect to future actions. A violation of such an order may result in a civil penalty up to $10,000 per violation being imposed upon a respondent.

CONSENT ORDER
(File No. D. 8931)

# # #

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of W. T. GRANT COMPANY, a corporation.	DOCKET NO. 8931 AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of W. T. Grant Company, a corporation, and it now appearing that W. T. Grant Company, a corporation, hereinafter sometimes referred to as respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices as hereinafter set forth in accordance with the Commission's Rule governing consent order procedure;

IT IS HEREBY AGREED by W. T. Grant Company, a corporation, and the undersigned attorneys herein that:

1. Respondent W. T. Grant Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1515 Broadway, New York, New York.

2. Respondent has been served with the Commission's complaint in Docket 8931 together with a form of order the Commission believed warranted in the circumstances. Subsequently, the Commission, upon the joint request of the respondent and counsel supporting the complaint and for good cause shown withdrew the matter from adjudication and granted them the opportunity for settlement by the entry of a consent order.

3. Respondent admits the Federal Trade Commission has jurisdiction over its person and over the subject matter contained in the draft of complaint heretofore served.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with a copy of the complaint heretofore served, will be placed on the public record for a period of thirty (30) days and information with respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the acceptance, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the copy of the complaint heretofore served.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34(b) of the Commission's Rules, the Commission may, without further notice to the respondent, issue its complaint, corresponding in form and substance with the copy of the complaint heretofore served and its decision containing the following order to cease and desist in disposition of the proceeding and make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The complaint and this agreement may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or this agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and order contemplated hereby, and it understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

IT IS ORDERED that respondent W. T. Grant Company, a corporation, and respondent's agents, representatives, employees and successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of merchandise or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, that:

   a. the coupon book contract is an agreement for the extension of open end credit;

   b. coupon books are devices issued pursuant to an agreement for the extension of open end credit; or

   c. a consumer is required to have had a coupon book account before he can obtain open end credit from respondent; provided that nothing herein contained shall prevent any representation to a consumer who then qualifies only for a coupon book account that he may thereafter qualify for open end credit.

2. Filling in any portion of or presenting a coupon book contract to any consumer for his signature unless, in connection with each such contract, respondent:

   a. prior thereto has presented to the consumer the following statement, printed in a clear and conspicuous manner on one side of a single sheet of paper (the reverse side of which sheet of paper may contain the coupon book contract) without any other language:

(In 16-point bold-faced type)
NOTICE: The Federal Trade Commission requires that we provide this information before we can offer you a coupon book contract:

(In 12-point bold-faced type)
W. T. Grant Company offers two different credit plans to qualified customers--an OPEN END CHARGE ACCOUNT and a COUPON BOOK PLAN. The Coupon Book Plan is NOT an open end or revolving credit plan. Some of the differences are:

1. THE KIND OF CREDIT--A CHARGE ACCOUNT is open end or revolving credit. The COUPON BOOK PLAN is installment credit. Once you use the first coupon you would pay for the entire book in the same way you would pay for a small installment loan.

2. YOUR PAYMENTS--Under the COUPON BOOK PLAN, after you use your first coupon, you pay each month part of the full price of the coupon book, which includes all finance charges, whether you have exchanged all the coupons for specific merchandise or not. When you have a CHARGE ACCOUNT, you pay only for the merchandise you have actually purchased, plus finance charges if you don't pay the entire balance each month.

3. COMPUTING FINANCE CHARGES--Finance charges on a CHARGE ACCOUNT are computed on specific merchandise purchased up to that point in time. But COUPON BOOK PLAN finance charges are computed on the total price of the coupon book and not just on the coupons already exchanged.

4. HOW TO AVOID FINANCE CHARGES--
You can avoid finance charges when you have a CHARGE ACCOUNT by paying the entire balance each month. You can only avoid finance charges on the COUPON BOOK PLAN by paying for the entire book within 30 days after you use the first coupon or by paying for the coupons used within 30 days after exchanging the first one and returning all unused coupons to Grant's. You may return coupons at any time and receive full credit for the unused portion.

(as applicable) YOU MAY CHOOSE EITHER GRANT'S OPEN END CHARGE ACCOUNT OR ITS COUPON BOOK PLAN (or) AT THIS TIME, YOU ARE ONLY ELIGIBLE FOR THE COUPON BOOK PLAN.

(In 16-point bold-faced type) I received and read the above statement before any coupon book contract was filled in or presented to me to sign.

Signed_____Date_____

b. prior thereto has obtained an acknowledgment, signed and dated by the consumer, of his having received and read the aforesaid statement; and

c. provides the consumer with a copy which he may retain of the aforesaid statement, printed in the manner set forth in sub-paragraph (a) of this paragraph, which copy shall be on the reverse side of the coupon book contract.

3. Adding on the existing coupon book obligation of any consumer who had not previously been eligible for open end credit from respondent unless respondent has:

a. obtained and scored a credit application from said consumer within the previous twelve months, which requirement can be fulfilled by updating and rescoring a credit application previously submitted to respondent by the consumer, and

b. complied with the requirements of Paragraph Two hereof.

...ing or presenting to any consumer optional ...voluntary property insurance written in connection with any credit sale unless respondent has:

a. read and presented to the consumer the following statement, printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the credit agreement:

Property insurance is entirely optional. You are not required to buy it to get credit.

b. obtained from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated by the consumer, of his having received and had read to him the aforesaid statement.

5. Checking the box next to the statement "I wish Property" on the retail installment contract, or otherwise making any mark, designation, or indication on any document in connection with any similar statement respecting the selection of voluntary or optional property insurance; provided that nothing herein contained shall prevent respondent from setting forth the cost of such insurance, as permitted by Section 226.4(a)(5) of Regulation Z (12 CFR 226) of the Truth in Lending Act (P.L. 90-321, 15 U.S.C. 1601 et seq.); provided further that the cost of such insurance shall not be filled in as

part of the "amount financed" on the disclosure statement required by Regulation Z in advance of the consumer's free and independent selection of such insurance.

6. Requesting any consumer to sign any document which purports to indicate the consumer's desire for optional or voluntary property insurance without orally disclosing to the consumer that his credit has already been approved, that property insurance is not required in connection with the extension of credit, that he need not buy such insurance, and that his signature is being requested in connection with an election of voluntary or optional property insurance.

7. Misrepresenting, orally or otherwise, directly or by implication, that voluntary or optional property insurance is required as a condition of obtaining credit from respondent.

8. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of voluntary or optional property insurance.

II

IT IS FURTHER ORDERED that respondent W. T. Grant Company, and respondent's agents, representatives, employees, and successors and assigns, directly or through any corporate or other device, in connection with the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12CFR 226) of the Truth in Lending Act (P.L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to include and to itemize the amount of premiums for credit life and credit accident and health insurance as part of the finance charge, unless the amount of such premiums is excluded from the finance charge because of appropriate exercise of the option available pursuant to Section 226.4(a)(5) of Regulation Z.

2. Offering or presenting to any consumer optional or voluntary credit life and/or credit accident and health insurance in connection with any credit transaction unless respondent has:

   a. read and presented to the consumer the following statement, printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the credit agreement:

      Credit life and/or credit accident and health insurance are entirely optional. You are not required to buy them to get credit.

   b. obtained from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated by the consumer, of his having received and had read to him the aforesaid statement.

3. Checking the box next to the statement "I wish Credit Life and Accident and Sickness" in the retail installment contract, or otherwise making any mark, designation or indication on any document in connection with any similar statement respecting the selection of voluntary or optional credit life insurance and/or credit accident and health insurance; provided that nothing herein contained shall prevent respondent from disclosing the cost of such insurance, as permitted by Section [illegible](a)(5)(ii) of Regulation Z; provided further that the cost of such insurance shall not be filled in as part of the"amount financed" on the disclosure statement required by Regulation Z before the consumer has given affirmative written indication that he desires such insurance coverage.

4. Requesting any consumer to sign any document which purports to indicate the consumer's desire for optional or voluntary credit life and/or credit accident and health insurance without orally disclosing to the consumer that his credit has already been approved, that credit life and/or credit accident and health insurance are not required in

connection with the extension of credit, that he need not buy such insurance and that his signature is being requested in connection with an election of optional credit life and/or credit accident and health insurance.

5. Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or accident and health insurance are required as a condition of obtaining credit from respondent.

6. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of optional or voluntary credit life and/or credit accident and health insurance.

7. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4 and 226.8 of Regulation Z.

8. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

9. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

IT IS FURTHER ORDERED that respondent shall retain a detailed description of the procedures used by it in the preceding three (3) years to determine whether a consumer has qualified for a coupon book account only or has also qualified for open end credit from respondent.

IT IS FURTHER ORDERED that respondent shall, one (1) year after the date upon which this order becomes final and one (1) year thereafter, file with the Commission a report, in writing, which shall include the following information, with respect to those states in which respondent offers coupon books:

1. the number of coupon book contracts and open end credit agreements signed in the previous year in states where coupons are offered by respondent;

2. the number of consumers who have qualified for open end credit from respondent but chose to sign a coupon book contract during the previous year;

3. the number of consumers who qualified during the prior year for a coupon book account only and did not sign a coupon book contract;

4. the number of consumers in states where coupons are offered by respondent during the previous year who, having previously been ineligible for open end credit from respondent, became eligible for and chose such credit.

IT IS FURTHER ORDERED that respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the making of respondent's policy concerning consumer credit, in the preparation or placement of advertisement offering to extend consumer credit, in the consummation of any extension of consumer credit, or in the offering of property, credit life or credit accident and health insurance in connection with any consumer credit transaction, and that respondent secure a signed statement from each such person acknowledging that he has received and read this order.

IT IS FURTHER ORDERED that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

IT IS FURTHER ORDERED that respondent shall retain for two (2) years following its execution the original of any statement or disclosure the receipt of which must be acknowledged by any consumer pursuant to this order.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth, in detail, the manner and form in which it has complied with the order to cease and desist contained herein.

Signed this 12th day of October, 1973.

W. T. GRANT COMPANY,
a corporation

By _____
President

1515 Broadway
New York, New York

White & Case

By _____

Attorneys for W. T. Grant Company

_____
Counsel Supporting Complaint

_____

APPROVED:

_____
Sheldon Feldman, Assistant
Director for Special Statutes

_____
Joan Z. Bernstein
Deputy Director
Bureau of Consumer Protection

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spect to the remaining balance. Disclosures at this point would still allow the student to turn to a private lender who is charging a lower rate.

Excerpts from FTC Informal Staff Opinion of August 18, 1969, by Ronald J. Dolan, Attorney.

[¶ 30,295] DISCLOSURE REQUIREMENTS

If you extend credit other than open end, you should make disclosures for each transaction, even when two contracts are consolidated. See Section 226.8(j) [¶ 3574].

In reviewing the form which you submitted, we have noted that you have failed to disclose what method would be used in refunding unearned finance charge in the event of prepayment. Please note that "total of payments" refers not to the number of payments, but to the amount of money which will be paid in repaying the credit extended.

Excerpts from FTC Informal Staff Opinion of August 18, 1969, by Alan Hechtkopf, Attorney.

[¶ 30,296] CHARGE FOR SERVICE ON MOBILE HOMES

This is in response to your letter of July 28, 1969 regarding a charge for a guarantee of service in connection with the purchase of mobile homes. The question involved was whether this charge is a finance charge under the Truth in Lending Act. According to your letter the charge is paid by cash customers and credit customers. Section 226.4 [¶ 3518] of Regulation Z, the implementing regulation of Truth in Lending, states as a general rule that those charges which are an incident of the extension of credit are finance charges. Other charges are not. It would therefore appear that these service charges are not finance charges.

Section 226.4 [¶ 3518] does refer to "service charges" as finance charges, but the service charges referred to are those which are an incident of the extension of credit, such as a service charge in connection with a charge account.

Excerpts from FTC Informal Staff Opinion of August 18, 1969, by Alan Hechtkopf, Attorney.

[¶ 30,297] FINANCED INSURANCE PREMIUMS—UNCOLLECTABLE ACCOUNTS

I have your letter of July 23, 1969 requesting advice as to the effect of the Regulation on your business of financing insurance premiums.

The fact that an account may become uncollectable does not take it out of the scope of the Regulation. If, subsequent to June 30, 1969, you entered into a contract which was an extension of consumer credit then disclosures must be made. In all likelihood disclosures covered by Section 226.8 [¶ 3565 *et seq.*] "credit other than open end" would be required.

Excerpts from FTC Informal Staff Opinion of August 20, 1969, by Walter J. O'Donnell, Consultant.

[¶ 30,298] ADD-ON PURCHASE AND DISCLOSURES

This is in response to your letter asking if you need to make disclosures when a customer makes an add-on purchase of furniture.

Any time the original obligation is increased by an add-on sale, the purchase is considered to be a new transaction and disclosures must be made with each subsequent purchase. (Reg. Z/226.8(j)) [¶ 3574]).

Excerpts from FTC Informal Staff Opinion of August 20, 1969, by Ronald J. Dolan, Attorney.

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Such insurance coverage which is not required as a condition of extending credit and which is purchased in response to a mail solicitation made after consummation of the credit transaction is not insurance "written in connection with" such transaction.

Excerpts from FRB Letter of June 26, 1969, by Milton W. Schober, Assistant Director.

[¶ 30,068] CREDIT LIFE INSURANCE

Thank you for your letter of June 16, in which you inquire about the provisions of Regulation Z as they relate to credit life insurance.

Section 226.8(j) Refinancing, consolidating, or increasing, does require that any existing extension of credit that is refinanced shall be considered a new transaction subject to all the disclosure requirements.

Under these circumstances, § 226.6(a)(5)(i) and (ii) would prevail, and a statement to the effect that insurance coverage is not required by the creditor must be conspicuously disclosed in writing to the customer. Additionally, as provided, a customer who does desire such coverage must necessarily provide the creditor with a specific dated and separately signed affirmative written indication of such desire after he has received written disclosure of the cost of such insurance.

Excerpts from FRB Letter of June 27, 1969, by Milton W. Schober, Assistant Director.

[¶ 30,069] MAINE APPLICATION FOR EXEMPTION OF STATE TRANSACTION

This will acknowledge receipt of your letter of June 20, 1969, requesting an interim exemption from the requirements of the Federal Truth in Lending Law pending a more formal determination after the Board has promulgated its final draft of Supplement II.

The Board is not in a position to issue an interim exemption, for under the law it must proceed "by regulation," and it may exempt any class of transactions from the requirements of Chapter II of the Truth in Lending Act "... if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement." The Board is not in a position to make a determination regarding any class of transactions within any State until it has adopted suitable regulations. It is anticipated that this will be accomplished through the promulgation of Supplement II to Regulation Z about July 1, 1969. Thereafter, the Board must analyze carefully the applicable State statutes and regulations and determine that they are, in fact, substantially similar to the Federal requirements and that there is adequate provision for enforcement.

We are aware of the provision in your Act which suspends its effective date until an exemption from the Federal statute is obtained. Certainly, it is not our desire to have you terminate your enforcement staff and then attempt to reconstruct it if a Federal exemption is granted. However, during the reasonably short time which we anticipate will be needed to make a determination, we understand that you will be able to utilize your field staff in various examination and enforcement functions of your office.

Excerpts from FRB Letter (to Maine Bank Commissioner) of June 30, 1969, by J. L. Robertson.

[¶ 30,070] DATE OF CONSUMMATION AND RESCISSION

You inquire what the "date of consummation" would be in a transaction subject to § 226.9 of Regulation Z.

[*Creation of Contractual Relationship*]

Section 226.9 provides that in certain consumer credit transactions the customer has a three day right of rescission "following the date of consummation of the transaction" or the date of delivery of the Truth in Lending disclosures, whichever is later. Section 226.2(cc) provides that "a transaction shall be considered consummated at the time a

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing was mailed this 30th day of December, 1974, postage prepaid, via U. S. Mail, to:

William Egan, Esq.
Wiggin & Dana
205 Church Street
New Haven, Connecticut

Stuart Bear